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AN
ANALYSIS
OF THE
LAWS
OF
ENGLAND.

TO WHICH IS PREFIXED
AN INTRODUCTORY DISCOURSE
ON THE STUDY OF THE LAW.

By WILLIAM BLACKSTONE, Esq. D.C.L.
BARRISTER AT LAW,
AND VINERIAN PROFESSOR OF THE LAWS OF
ENGLAND IN THE UNIVERSITY OF OXFORD.

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P R E F A C E.

IT hath often been observed with Concern, that the Study of the Laws of our Country hath been totally neglected in the usual Education of ENGLISH Gentlemen; and, in particular, that no Opportunities of cultivating this Branch of Learning have hitherto been afforded in those excellent and illustrious Seminaries, wherein every other Science is taught in it's utmost Perfection. To remedy, in some little Degree, so just a Complaint, the Compiler of the following Sheets was induced about three Years ago to institute, and since to continue, a Course of Lectures, calculated for the Promotion of this Study in the University of OXFORD. And as he was encouraged to enter upon this Undertaking by Gentlemen, both in the University and out of it, for whose Learning and Judgment the World has the highest Deference; so he cannot but acknowledge, with due Gratitude, the favorable Reception which hath been given it: A Mark of Approbation, which

he is sensible must be attributed entirely to the Propriety of the Design, and not to the Manner of it's Execution.

In order to render this Attempt more extensively useful, he thought it incumbent upon him to accommodate his Lectures, not only to the Use of such Students, as were more immediately designed for the Profession of the common Law; but also of such other Gentlemen, as were desirous of some general Acquaintance with the Constitution and legal Polity of their native Country. He therefore made it his first Endeavour, to mark out a Plan of the Laws of ENGLAND, so comprehensive, as that every Title might be reduced under some or other of it's general Heads, which the Student might afterwards pursue to any Degree of Minuteness; and at the same time so contracted, that the Gentleman might with tolerable Application contemplate and understand the Whole. For if this was successfully performed, he apprehended he should then be enabled, with greater Perspicuity and Ease, to execute the Remainder of his Design; in deducing the History and Antiquities of the principal Branches of Law, in selecting and illustrating their fundamental Principles and leading Rules, in explaining their Utility and Reason, and in comparing them with the Laws of Nature and of other Nations.

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*In the Pursuit of these his Endeavours, he found himself obliged to adopt a Method, in many respects totally new. The most early, and indeed the most valuable, of those who have laboured in reducing our Laws to a System, are GLANVIL, and BRAC-
TON, BRITTON, and the Author of FLETA: But these, and all others who preceded King HENRY the eighth, are so occupied in antient (he does not say, useless) Learning, that it had been but an awkward Attempt to engraft on their Stock the Improvements of later Ages. — FITZHERBERT, and BROOK, and the subsequent Authors of Abridgments, have chosen a Method, the least adapted of any to convey the Rudiments of a Science; namely, that of the Alphabet. — Lord BACON, in his Elements, hath purposely avoided any regular Order; selecting only some distinct and dis-joined Aphorisms, according to his own Account of them; which however he hath expounded in so excellent a Manner, that the Narrowness of his Plan is therefore the more to be regretted. — The Institutes of Sir EDWARD COKE are unfortunately as deficient in Method, as they are rich in Matter; at least, the two first Parts of them; wherein, acting only the Part of a Commentator, he hath thrown together an infinite Treasure of Learning in a loose desultory Order. — Dr COWEL hath indeed endeavoured to reduce the Law*
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of ENGLAND, in his *Latin Institutions*, to the *Model of those of JUSTINIAN*: And we cannot be surprized, that so forced and unnatural a Contrivance should be lame and defective in it's Execution. — Sir HENRY FINCH's *Discourse of Law* is a *Treatise of a very different Character*: His *Method* is greatly superior to all that were before extant; his *Text* is weighty, concise, and nervous; his *Illustrations* are apposite, clear, and authentic. But, with all these Advantages, it is not sufficiently adapted to modern Use; since the subsequent Alterations of the Law, by the Abolition of military Tenures, and the Disuse of real Actions, have rendered near half of his Book obsolete. — Dr WOOD has effectually removed this Objection, but has fallen into the contrary Extreme; his *Institute* being little more than FINCH's *Discourse* enlarged, and so thoroughly modernized, as to leave us frequently in the Dark, with regard to the Reason and Original of many still subsisting Laws, which are founded in remote Antiquity. And as in some Titles his Plan is too contracted, in others also it seems to be too diffuse. Upon the Whole however his Work is undoubtedly a valuable Performance; and great are the Obligations of the Student to him, and his Predecessor FINCH, for their happy Progress in reducing the Elements of Law from their former Chaos to a regular methodical Science. Yet, as neither could
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be followed entirely in the proposed Course of academical Lectures, it was judged the most eligible Way not to adopt them in Part; especially as there were extant the Outlines of a still superior Method, sketched by a very masterly Hand.

For, of all the Schemes hitherto made public for digesting the Laws of ENGLAND, the most natural and scientific of any, as well as the most comprehensive, appeared to be that of Sir MATTHEW HALE, in his posthumous Analysis of the Law. This Distribution therefore hath been principally followed; with what Variations, the learned Reader will easily perceive from the ensuing Abstract; and it may be no unprofitable Employment for the Student to learn by comparing them. For these the Compiler thinks it unnecessary to give his Reasons: For, since those who have gone before him have successively deviated from each other's Plan, he hopes to be excused, if, in order to adapt some things the better to his own Capacity, he frequently departs from them all; having in general rather chosen, by compounding their several Schemes, to extract a new Method of his own, than implicitly to copy after any.

Indeed had he closely adhered to HALE's, or any other Distribution, it might probably have rendered

ed the Task he had undertaken less laborious; at least, it would have saved him the Trouble of the present Publication. For he soon became sensible of one Inconvenience attending his Deviation from former Systems: That, in a Course of oral Lectures, on a Science entirely new, and sometimes a little abstruse, it was not always easy for his Audience so far to command their Attention, as at once to apprehend both the Method and Matter delivered: And, whenever, through Inattention in the Hearers, or (too frequently) through Obscurity in the Reader, any Point of Importance was forgotten or misunderstood, it became next to impossible to gather up the broken Clue, without having some written Compendium to which they might resort upon Occasion. These Considerations gave Birth to the following ANALYSIS, which exhibits the Order, and principal Divisions, of his Course; and is only to be considered as a larger Syllabus, interspersed with a few Definitions and general Rules, to assist the Recollection of such Gentlemen as have formerly honoured him with their Attendance; or such as may hereafter become his Auditors, till this Task shall fall into abler Hands, and the Province, which he originally undertook in a private Capacity, shall be put upon a public Establishment.

To the ANALYSIS is subjoined an APPENDIX, consisting of such Tables, Copies of Instruments, and Forms of judicial Proceedings, as were judged to be necessary for explaining certain Principles, and Matters of daily Practice; of which it was however impracticable to convey any adequate Idea by verbal Descriptions only. In the Explanation of one of these, (the Table of Descents,) the Compiler hath been obliged to enter into a minute Discussion of a Point liable to some Controversy: This he could have wished to have avoided; but was fearful, of either appearing to mislead the Student, had no Notice been taken of Justice MANWOOD'S Doctrine; or perhaps of really misleading him, had that Doctrine been followed in constructing the Table.

With regard to the Book in general, if by any Accident it should fall into other Hands than those for whose Use it is designed, the Author hopes it will meet with that Candor which is ever the Companion of sound Learning. The Gentlemen of his own Profession, he is confident, will suspend their Censures of whatever (in this Abstract) may appear either dubious or unwarrantable; at least till they are informed how far (in the Work at large) it is guarded by Restrictions, qualified by Exceptions, or supported by Reason and Authority. And in the
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*end, he must beg Leave to apply to his whole Undertaking, as well as to this trifling Performance, the Words of his Master LITTLETON: "Jeo ne voill
 "que tu crez, que tout ceo que jeo ay dit en
 "lez ditez Lyvers soit LEY; quar jeo ne ceo
 "voill entreprendre, ne presumer sur moy. —
 "Nient meyns, coment que certain Choses, queux
 "font motes et specyfieez en lez ditez Lyvers, ne
 "font pas LEY, uncore tielx Choses ferront toy
 "plus apte et able de entendre et apprendre lez
 "Argumentez et lez Reasons del LEY.*

Thus much he thought it necessary to premise before the former Editions of the ANALYSIS, in 1756 and 1757. But the Book having, by some means or other, met with a more general Reception out of the University than he ever apprehended it could have done, and another Impression being called for, he thought it incumbent upon him, by revising and correcting what Inaccuracies had formerly escaped him, and adding a greater Variety of Precedents and Forms in the APPENDIX, to make it in some degree less unworthy the public Regard. When this was done, and the Sheets were just ready for Publication, he received the very singular Honour from the University of being elected their first Professor of municipal Law, upon the public Establishment
hinted

P R E F A C E.

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hinted at in a former Page, with an ample Endowment from the Effects of the late Mr VINER. His introductory Lecture upon that Occasion being ordered to the Press, at the instance of the Governors of the University, was also thought proper to be prefixed to this Work; not only on account of their evident Connexion with each other, but also to relieve the Attention of the Reader by some Enquiries more interesting and amusing, than the dry Method of analytical Distribution, or the dull Forms of Conveyancing and Entries.

ALL-SOULS COLLEGE.

2 Nov. 1758.

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A
DISCOURSE
ON THE
STUDY OF THE LAW,
READ IN THE PUBLIC SCHOOLS
AT
OXFORD,
OCTOBER, XXV. M.DCC.LVIII.

A
DISCOURSE
ON THE
STUDY OF THE LAW.

MR VICE-CHANCELLOR, AND GENTLEMEN
OF THE UNIVERSITY,

THE general expectation of so numerous and respectable an audience, the novelty, and (I may add) the importance of the duty required from this chair, must unavoidably be productive of great diffidence and apprehensions in him who has the honour to be placed in it. He must be sensible how much will depend upon his conduct

duct in the infancy of a study, which is now first adopted by public academical authority; which has generally been reputed (however unjustly) of a dry and unfruitful nature; and of which the theoretical, elementary parts have hitherto received a very moderate share of cultivation. He cannot but reflect that, if either his plan of instruction be crude and injudicious, or the execution of it lame and superficial, it will cast a damp upon the farther progress of this most useful and most rational branch of learning; and may defeat for a time the public-spirited design of our wise and munificent benefactor. And this he must more especially dread, when he feels by experience how unequal his abilities are (unassisted by preceding examples) to complete, in the manner he could wish, so extensive and arduous a task; since he freely confesses, that his former more private attempts have fallen very short of his own ideas of perfection. And yet the candour he has already experienced, and this last transcendent mark of regard, his present nomination by the free and unanimous suffrage of a great and learned university, (an honour to be ever remembered with the deepest and most affectionate gratitude) these testimonies of your public judgment must entirely supersede his own, and forbid him to believe him-

himself totally insufficient for the labour at least of this employment. One thing he will venture to hope for, and it certainly shall be his constant aim, by diligence and attention to atone for his other defects; esteeming, that the best return, which he can possibly make for your favourable opinion of his capacity, will be his unwearied endeavours in some little degree to deserve it.

THE science thus committed to his charge, to be cultivated, methodized, and explained in a course of academical lectures, is that of the laws and constitutions of our own country: a species of knowledge, in which the gentlemen of England have been more remarkably deficient than those of all Europe besides. In most of the nations on the continent, where the civil or imperial law under different modifications is closely interwoven with the municipal laws of the land, no gentleman, or at least no scholar, thinks his education is completed, till he has attended a course or two of lectures, both upon the institutes of Justinian and the local constitutions of his native soil, under the very eminent professors that abound in their several universities. And in the northern parts of our own island, where also the municipal laws are frequently

quently connected with the civil, it is difficult to meet with a person of liberal education, who is destitute of a competent knowledge in that science, which is to be the guardian of his natural rights and the rule of his civil conduct.

NOR have the imperial laws been totally neglected even in the english nation. A general acquaintance with their decisions has ever been deservedly considered as no small accomplishment of a gentleman; and a fashion has prevailed, especially of late, to transport the growing hopes of this island to foreign universities, in Switzerland, Germany, and Holland; which, though infinitely inferior to our own in every other consideration, have been looked upon as better nurseries of the civil, or (which is nearly the same) of their own municipal law. In the mean time it has been the peculiar lot of our admirable system of laws, to be neglected, and even unknown, by all but one practical profession; though built upon the soundest foundations, and approved by the experience of ages.

FAR be it from me to derogate from the study of the civil law, considered (apart from any binding authority) as a collection of written reason. No man is more thoroughly persuaded
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of the general excellence of it's rules, and the usual equity of it's decisions ; nor is better convinced of it's use as well as ornament to the scholar, the divine, the statesman, and even the common lawyer. But we must not carry our veneration so far as to sacrifice our Alfred and Edward to the manes of Theodosius and Justinian : we must not prefer the edict of the praetor, or the rescript of the roman emperor, to our own immemorial customs, or the sanctions of an english parliament ; unless we can also prefer the despotic monarchy of Rome and Byzantium, for whose meridians the former were calculated, to the free constitution of Britain, which the latter are adapted to perpetuate.

WITHOUT detracting therefore from the real merit which abounds in the imperial law, I hope I may have leave to assert, that if an Englishman must be ignorant of either the one or the other, he had better be a stranger to the roman than the english institutions. For I think it an undeniable position, that a competent knowlege of the laws of that society, in which we live, is the proper accomplishment of every gentleman and scholar ; an highly useful, I had almost said essential, part of liberal and polite education. And in this I am warranted by the example of
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antient Rome; where, as Cicero informs us^a, the very boys were obliged to learn the twelve tables by heart, as a *carmen necessarium* or indispensable lesson, to imprint on their tender minds an early knowledge of the laws and constitutions of their country.

BUT as the long and universal neglect of this study, with us in England, seems in some degree to call in question the truth of this evident position, it shall therefore be the business of this introductory lecture, in the first place to demonstrate the utility of some general acquaintance with the municipal law of the land, by pointing out its particular uses in all considerable situations of life. Some conjectures will then be offered with regard to the causes of neglecting this useful study: to which will be subjoined a few reflexions on the peculiar propriety of reviving it in our own universities.

AND, first, to demonstrate the utility of some acquaintance with the laws of the land, let us only reflect a moment on the singular frame and polity of that land, which is governed by this system of laws. A land, perhaps the only one in the universe, in which political or

^a De Legg. II. 23.

civil liberty is the very end and scope of the constitution^b. This liberty, rightly understood, consists in the power of doing whatever the laws permit^c; which is only to be effected by a general conformity of all orders and degrees to those equitable rules of action, by which the meanest individual is protected from the insults and oppression of the greatest. As therefore every subject is interested in the preservation of the laws, it is incumbent upon every man to be acquainted with those at least, with which he is immediately concerned; lest he incur the censure, as well as inconvenience, of living in society without knowing the obligations which it lays him under. And thus much may suffice for persons of inferior condition, who have neither time nor capacity to enlarge their views beyond that contracted sphere in which they are appointed to move. But those, on whom nature and fortune have bestowed more abilities and greater leisure, cannot be so easily excused. These advantages are given them, not for the benefit of themselves only, but also of the public: and yet they cannot, in any scene of life, discharge properly their duty either to the pub-

^b MONTESQUIEU'S Spirit of Laws. b. II. c. 5.

^c *Facultas ejus, quod cuique facere libet, nisi quid vi, aut jure prohibetur.* Inst. I. 3. 1.

lic or themselves, without some degree of knowledge in the laws. To evince this the more clearly, it may not be amiss to descend to a few particulars.

LET us therefore begin with our gentlemen of independent estates and fortune, the most useful as well as considerable body of men in the nation; whom even to suppose ignorant in this branch of learning is treated by Mr Locke^d as a strange absurdity. It is their landed property, with it's long and voluminous train of descents and conveyances, settlements, entails, and incumbrances, that forms the most intricate and most extensive object of legal knowledge. The thorough comprehension of these, in all their minute distinctions, is perhaps too laborious a task for any but a lawyer by profession: yet still the understanding of a few leading principles, relating to estates and conveyancing, may form some check and guard upon a gentleman's inferior agents, and preserve him at least from very gross and notorious imposition.

AGAIN, the policy of all laws has made some forms necessary in the wording of last wills and testaments, and more with regard to their

^d Education. §. 187.

attestation.

attestation. An ignorance in these must always be of dangerous consequence, to such as by choice or necessity compile their own testaments without any technical assistance. Those who have attended the courts of justice are the best witnesses of the confusion and distresses that are hereby occasioned in families; and of the difficulties that arise in discerning the true meaning of the testator, or sometimes in discovering any meaning at all: so that in the end his estate may often be vested quite contrary to these his enigmatical intentions, because perhaps he has omitted one or two formal words, which are necessary to ascertain the sense with indisputable legal precision, or has executed his will in the presence of fewer witnesses than the law requires.

BUT to proceed from private concerns to those of a more public consideration. All gentlemen of fortune are, in consequence of their property, liable to be called upon to establish the rights, to estimate the injuries, to weigh the accusations, and sometimes to dispose of the lives of their fellow-subjects, by serving upon juries. In this situation they are frequently to decide, and that upon their oaths, questions of nice importance, in the solution of which some legal skill is requisite; especially where the law and
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the fact, as it often happens, are intimately blended together. And the general incapacity, even of our best juries, to do this with any tolerable propriety has greatly debased their authority; and has unavoidably thrown more power into the hands of the judges, to direct, control, and even reverse their verdicts, than perhaps the constitution intended.

BUT it is not as a juror only that the english gentleman is called upon to determine questions of right, and distribute justice to his fellow-subjects: it is principally with this order of men that the commission of the peace is filled. And here a very ample field is opened for a gentleman to exert his talents, by maintaining good order in his neighbourhood; by punishing the dissolute and idle; by protecting the peaceable and industrious; and, above all, by healing petty differences and preventing vexatious prosecutions. But, in order to attain these desirable ends, it is necessary that the magistrate should understand his business; and have not only the will but the power also, (under which must be included the knowledge) of administering legal and effectual justice. Else, when he has mistaken his authority, through passion, through ignorance, or absurdity, he will be
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the object of contempt from his inferiors, and of censure from those to whom he is accountable for his conduct.

YET further; most gentlemen of considerable property, at some period or other in their lives, are ambitious of representing their country in parliament: and those, who are ambitious of receiving so high a trust, would also do well to remember it's nature and importance. They are not thus honourably distinguished from the rest of their fellow-subjects, merely that they may privilege their persons, their estates, or their domestics; that they may lift under party banners; may grant or with-hold supplies; may vote with or vote against a popular or unpopular administration; but upon considerations far more interesting and important. They are the guardians of the english constitution; the makers, repealers, and interpreters of the english laws; delegated to watch, to check, and to avert every dangerous innovation, to propose, to adopt, and to cherish any solid and well-weighed improvement; bound by every tie of nature, of honour, and of religion, to transmit that constitution and those laws to their posterity, amended if possible, at least without any derogation. And how unbecoming must it appear in a member
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of the legislature to vote for a new law, who is utterly ignorant of the old ! what kind of interpretation can he be enabled to give, who is a stranger to the text upon which he comments !

INDEED it is really amazing, that there should be no other state of life, no other occupation, art, or science, in which some method of instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any. Apprenticeships are held necessary to almost every art, commercial or mechanical : a long course of reading and study must form the divine, the physician, and the practical professor of the laws : but every man of superior fortune thinks himself *born* a legislator. Yet Tully was of a different opinion : “It is necessary, says he^c, for a senator to be “thoroughly acquainted with the constitution ; “and this, he declares, is a knowlege of the “most extensive nature ; a matter of science, “of diligence, of reflexion ; without which no “senator can possibly be fit for his office.”

THE mischiefs that have arisen to the public from inconsiderate alterations in our laws, are

^c De Legg. III. 18. *Est senatori necessarium nosse rempublicam ; idque late patet : — genus hoc omne scientiae, diligentiae, memoriae est ; sine quo paratus esse senator nullo pacto potest.*

too

too obvious to be called in question; and how far they have been owing to the defective education of our senators, is a point well worthy the public attention. The common law of England has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new dress and refine, with all the rage of modern improvement. Hence frequently it's symmetry has been destroyed, it's proportions distorted, and it's majestic simplicity exchanged for specious embellishments and fantastic novelties. For, to say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays (which have sometimes disgraced the english, as well as other, courts of justice) owe their original not to the common law itself, but to innovations that have been made in it by acts of parliament; "overladen (as lord Coke expresses it^f) with "provisoes and additions, and many times on a "sudden penned or corrected by men of none "or very little judgment in law." This great and well-experienced judge declares, that in all his time he never knew two questions made upon rights merely depending upon the common law; and warmly laments the confusion introduced by ill-judging and unlearned legislators.

^f 2 Rep. Pref.

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“But if, he subjoins, acts of parliament were
“after the old fashion penned, by such only as
“perfectly knew what the common law was
“before the making of any act of parliament
“concerning that matter, as also how far forth
“former statutes had provided remedy for for-
“mer mischiefs and defects discovered by ex-
“perience; then should very few questions in
“law arise, and the learned should not so often
“and so much perplex their heads to make
“atonement and peace, by construction of law,
“between insensible and disagreeing words, sen-
“tences, and provisoes, as they now do.” And
if this inconvenience was so heavily felt in the
reign of queen Elizabeth, you may judge how
the evil is increased in later times, when the
statute book is swelled to ten times a larger
bulk; unless it should be found, that the pen-
ners of our modern statutes have proportion-
ably better informed themselves in the know-
lege of the common law.

WHAT is said of our gentlemen in general,
and the propriety of their application to the
study of the laws of their country, will hold
equally strong or still stronger with regard to
the nobility of this realm, except only in the
article of serving upon juries. But, instead of
this,

this, they have several peculiar provinces of far greater consequence and concern; being not only by birth hereditary counsellors of the crown, and judges upon their honour of the lives of their brother-peers, but also arbiters of the property of all their fellow-subjects, and that in the last resort. In this their judicial capacity they are bound to decide the nicest and most critical points of the law; to examine and correct such errors as have escaped the most experienced sages of the profession, the lord keeper and the judges of the courts at Westminster. Their sentence is final, decisive, irrevocable: no appeal, no correction, not even a review can be had: and to their determination, whatever it be, the inferior courts of justice must conform; otherwise the rule of property would no longer be uniform and steady.

SHOULD a judge in the most subordinate jurisdiction be deficient in the knowledge of the law, it would reflect infinite contempt upon himself and disgrace upon those who employ him. And yet the consequence of his ignorance is comparatively very trifling and small: his judgment may be examined, and his errors rectified by other courts. But how much more serious and affecting is the case of a superior
c judge,

judge, if without any skill in the laws he will boldly venture to decide a question, upon which the welfare and subsistence of whole families may depend! where the chance of his judging right, or wrong, is barely equal; and where, if he chances to judge wrong, he does an injury of the most alarming nature, an injury without possibility of redress!

YET, vast as this trust is, it can no where be so properly reposed as in the noble hands where our excellent constitution has placed it: and therefore placed it, because, from the independence of their fortune and the dignity of their station, they are presumed to employ that leisure which is the consequence of both, in attaining a more extensive knowledge of the laws than persons of inferior rank: and because the founders of our polity relied upon that delicacy of sentiment, so peculiar to noble birth; which, as on the one hand it will prevent either interest or affection from interfering in questions of right, so on the other it will bind a peer in honour, an obligation which the law esteems equal to another's oath, to be master of those points upon which it is his birthright to decide.

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THE roman pandects will furnish us with a piece of history not unapplicable to our present purpose. Servius Sulpicius, a gentleman of the patrician order, and a celebrated orator, had occasion to take the opinion of Quintus Mutius Scaevola, the oracle of the roman law; but for want of being conversant in that science, could not so much as understand even the technical terms, which his counsel was obliged to make use of. Upon which Mutius Scaevola could not forbear to upbraid him with this memorable reproof^g, “that it was a shame for a patrician, a nobleman, and an orator to be ignorant of the law under which he lived.” Which reproach made so deep an impression on Sulpicius, that he immediately applied himself to the study of the law; wherein he arrived to that proficiency, that he left behind him about a hundred and fourscore volumes of his own compiling upon the subject; and became, in the opinion of Cicero^h, a much more complete lawyer than even Mutius Scaevola himself.

I WOULD not be thought to recommend to our english nobility and gentry to become as

^g Ff. I. 2. 2. §. 43. *Turpe esse patricio, & nobili, & causas oranti, jus in quo versaretur ignorare.*

^h Brut. 41.

great lawyers as Sulpicius ; though he, together with this character, sustained likewise that of an excellent orator, a firm patriot, and a wife indefatigable senator ; but the inference which arises from the story is this, that ignorance of the laws of the land hath ever been esteemed dishonourable, in those who are entrusted by their country to maintain, to administer, and to amend them.

BUT surely there is little occasion to enforce this argument any farther to persons of rank and distinction, if we of this place may be allowed to form a general judgment from those who are under our inspection : happy, that while we lay down the rule, we can also produce the example. You will therefore permit your professor to indulge both a public and private satisfaction by bearing this open testimony, that in the very infancy of these studies among us, they were favoured with the most diligent attendance, and pursued with the most unwearied application, by those of the noblest birth and most ample patrimony : some of whom are still the ornaments of this seat of learning ; and others at a greater distance continue doing honour to it's institutions, by comparing our polity and laws with those of other kingdoms abroad,

abroad, or exerting their senatorial abilities in the councils of the nation at home.

NOR will some degree of legal knowledge be found in the least superfluous to persons of inferior rank ; especially those of the learned professions. The clergy in particular, besides the common obligations they are under in proportion to their rank and fortune, have also abundant reason, considered merely as clergymen, to be acquainted with many branches of the law, which are almost peculiar and appropriated to themselves alone. Such are the laws relating to advowsons, institutions, and inductions ; to simony, and simoniacal contracts ; to uniformity, residence, and pluralities ; to tithes and other ecclesiastical dues ; to marriages (more especially of late) and to a variety of other subjects, which are consigned to the care of their order by the provisions of particular statutes. To understand these aright, to discern what is warranted or enjoined, and what is forbidden by law, demands a sort of legal apprehension ; which is no otherwise to be acquired than by use and a familiar acquaintance with legal writers.

FOR the gentlemen of the faculty of physic, I must frankly own that I see no special reason,
why

why they in particular should apply themselves to the study of the law ; unless in common with other gentlemen, and to complete the character of general and extensive knowlege ; a character which their profession, beyond others, has remarkably deserved. They will give me leave however to suggest, and that not ludicrously, that it might frequently be of use to families upon sudden emergencies, if the physician were acquainted with the doctrine of last wills and testaments, at least so far as relates to the formal part of their execution.

BUT those gentlemen who intend to profess the civil and ecclesiastical laws in the spiritual and maritime courts of this kingdom, are of all men (next to common lawyers) the most indispensably obliged to apply themselves seriously to the study of our municipal laws. For the civil and canon laws, considered with respect to any intrinsic obligation, have no force or authority in this kingdom ; they are no more binding in England than our laws are binding at Rome. But as far as these foreign laws, on account of some peculiar propriety, have in some particular cases, and in some particular courts, been introduced and allowed by our laws, so far they oblige, and no farther ; their authority being wholly

wholly founded upon that permission and adoption. In which we are not singular in our notions; for even in Holland, where the imperial law is much cultivated and its decisions pretty generally followed, we are informed by Van Leeuwenⁱ, that "it receives its force from custom and the consent of the people, either tacitly or expressly given: for otherwise, he adds, we should no more be bound by this law, than by that of the Almain, the Franks, the Saxons, the Goths, the Vandals, and other of the antient nations." Wherefore in all points in which the different systems depart from each other, the law of the land takes place of the law of Rome, whether ancient or modern, imperial or pontifical. And in those of our english courts wherein a reception has been allowed to the civil and canon laws, if either they exceed the bounds of that reception, by extending themselves to other matters, than are permitted to them; or if such courts proceed according to the decisions of those laws, in cases wherein it is controlled by the law of the land, the common law in either instance both may, and frequently does, prohibit and annul their proceedings^k: and it will not be a sufficient

ⁱ *Dedicatio corporis juris civilis*. Edit. 1663. ^k HALE'S Hist. C. L. c. 2. SELDEN in Fletam. 5 Rep. Caudrey's Case. COKE on Artic. Cler. 2 Inst. 599.

excuse for them to tell the king's courts at Westminster, that their practice is warranted by the laws of Justinian or Gregory, or is conformable to the decrees of the Rota or imperial chamber. For which reason it becomes highly necessary for every civilian and canonist that would act with safety as a judge, or with prudence and reputation as an advocate, to know in what cases and how far the english laws have given sanction to the roman; in what points the latter are rejected; and where they are both so intermixed and blended together, as to form certain supplemental parts of the common law of England, distinguished by the titles of the king's maritime, the king's military, and the king's ecclesiastical law. The propriety of which enquiry the university of Oxford has for more than a century so thoroughly seen, that in her statutes¹ she appoints, that one of the three questions to be annually discussed at the act by the jurist-inceptors shall relate to the common law; subjoining this reason, "*quia juris civilis studiosos decet haud imperitos esse juris municipalis, & differentias exteri patriique juris notas habere.*" And the university of Cambridge, in her statutes^m, has declared herself to the same effect.

¹ Tit. VII. Sect. 2. §. 2.
 lican. in Proëmio.

^m COWELLI Instit. Jur. Anglican.
 FROM

FROM the general use and necessity of some acquaintance with the common law, the inference were extremely easy, with regard to the propriety of the present institution, in a place to which gentlemen of all ranks and degrees resort, as the fountain of all useful knowledge. But how it has come to pass that a design of this sort has never before taken place in the university, and the reason why the study of our laws has in general fallen into disuse, I shall previously proceed to enquire.

SIR John Fortescue, in his panegyric on the laws of England, (which was written in the reign of Henry the sixth) putsⁿ a very obvious question in the mouth of the young prince, whom he is exhorting to apply himself to that branch of learning; “why the laws of England, being so good, so fruitful, and so commodious, are not taught in the universities, as the civil and canon laws are?” In answer to which he gives^o what seems, with due deference be it spoken, a very jejune and unsatisfactory reason; being in short, that “as the proceedings at common law were in his time carried on in three different tongues, the eng-

ⁿ c. 47.

^o c. 48.

“lish,

lish, the latin, and the french, that science
“must be necessarily taught in those three seve-
“ral languages; but that in the universities all
“sciences were taught in the latin tongue only;
“and therefore he concludes, that they could
“not be conveniently taught or studied in our
“universities.” But without attempting to ex-
amine seriously the validity of this reason, (the
very shadow of which by the wisdom of your
late constitutions is entirely taken away) we
perhaps may find out a better, or at least a more
plausible account, why the study of the muni-
cipal laws has been banished from these seats of
science, than what the learned chancellor thought
it prudent to give to his royal pupil.

THAT antient collection of unwritten max-
ims and customs, which is called the common
law, however compounded or from whatever
fountains derived, had subsisted immemorially
in this kingdom; and, though somewhat alter-
ed and impaired by the violence of the times,
had in great measure weathered the rude shock
of the norman conquest. This had endeared it
to the people in general, as well because it's
decisions were universally known, as because it
was found to be excellently adapted to the ge-
nius of the english nation. In the knowlege of
this

this law consisted great part of the learning of those dark ages; it was then taught, says Mr Selden^p, in the monasteries, *in the universities*, and in the families of the principal nobility. The clergy in particular, as they then engrossed almost every other branch of learning, so (like their predecessors the british druids^q) they were peculiarly remarkable for their proficiency in the study of the law. *Nullus clericus nisi causidicus*, is the character given of them soon after the conquest by William of Malmſbury^r. The judges therefore were usually created out of the sacred order^s, as was likewise the case among the normans^t; and all the inferior offices were supplied by the lower clergy, which has occasioned their successors to be denominated *clerks* to this day.

BUT the common law of England, being not committed to writing, but only handed down by tradition, use, and experience, was not so heartily relished by the foreign clergy; who

^p In Fletam. 7. 7.

^q CAESAR de bello gal. 6. 12.

^r De gest. reg. l. 4.

^s DUGDALE Orig. jurid. c. 8.

^t *Les juges sont sages personnes & autentiques, — sicome les archevesques, evesques, les chanoines des eglises cathedraulx, & les autres personnes qui ont dignitez in sainte eglise; les abbez, les prieurs conventualx, & les gouverneurs des eglises, &c. Grand Coustumier, ch. 9.*

came

came over hither in shoals during the reign of the conqueror and his two sons, and were utter strangers to our constitution as well as our language. And an accident, which soon after happened, had nearly completed it's ruin. A copy of Justinian's pandects, being newly ^u discovered at Amalfi, soon brought the civil law into vogue all over the west of Europe, where before it was quite laid aside ^w and in a manner forgotten; though some traces of it's authority remained in Italy ^x and the eastern provinces of the empire ^y. This now became in a particular manner the favourite of the popish clergy, who borrowed the method and many of the maxims of their canon law from this original. The study of it was introduced into several universities abroad, particularly that of Bologna; where exercises were performed, lectures read, and degrees conferred in this faculty, as in other branches of science: and many nations on the continent, just then beginning to recover from the convulsions consequent upon the overthrow of the roman empire, and settling by degrees into peaceable forms of government, adopted the civil law, (being the best written system then extant) as the basis of their several constitutions;

^u Circ. A.D. 1130. ^w LL. Wisigoth. II. 1. 9. ^x Capitular. Hludov. Pii. IV. 102. ^y SELDEN in Fletam. 5. 5.

blending

blending and interweaving it among their own feudal customs, in some places with a more extensive, in others a more confined authority^z.

NOR was it long before the prevailing mode of the times reached England. For Theobald, a norman abbot, being elected to the see of Canterbury^a, and extremely addicted to this new study, brought over with him in his retinue many learned proficients therein; and among the rest Roger surnamed Vacarius, whom he placed in the university of Oxford^b, to teach it to the people of this country. But it did not meet with the same easy reception in England, where a mild and rational system of laws had been long established, as it did upon the continent; and, though the monkish clergy (devoted to the will of a foreign primate) received it with eagerness and zeal, yet the laity who were more interested to preserve the old constitution, and had already severely felt the effect of many norman innovations, continued wedded to the use of the common law. King Stephen immediately published a proclamation^c, forbidding

^z DOMAT'S treatise of laws. c. 13. §. 9. Epistol. INNOCENT. IV. in M. Paris. ad A. D. 1254. ^a A. D. 1138.

^b GERVAS. DOROBERN. Act. Pontif. Cantuar. col. 1665.

^c ROG. BACON. citat. per SELDEN. in Fletam. 7. 6. in Fortesc. c. 33. & 8 Rep. Pref.

the study of the laws, then newly imported from Italy; which was treated by the monks^d as a piece of impiety, and, though it might prevent the introduction of the civil law process into our courts of justice, yet did not hinder the clergy from reading and teaching it in their own schools and monasteries.

FROM this time the nation seems to have been divided into two parties; the bishops and clergy, many of them foreigners, who applied themselves wholly to the study of the civil and canon laws, which now came to be inseparably interwoven with each other; and the nobility and laity, who adhered with equal pertinacity to the old common law; both of them reciprocally jealous of what they were unacquainted with, and neither of them perhaps allowing the opposite system that real merit which is abundantly to be found in each. This appears on the one hand from the spleen with which the monastic writers^e speak of our municipal laws upon all occasions; and, on the other, from the firm temper which the nobility shewed at the famous parliament of Merton; when the prelates endeavoured to procure an act, to declare all bastards

^d JOAN. SARISBURIENS. Polycrat. 8. 22.
ibid. 5. 16. POLYDOR. VERGIL. Hist. 1. 9.

^e IDEM,
legi-

legitimate in case the parents intermarried at any time afterwards ; alleging this only reason, because holy church (that is, the canon law) declared such children legitimate : but “ all the
“ earls and barons (says the parliament roll ^f)
“ with one voice answered, that they would not
“ change the laws of England, which have hitherto been used and approved.” And we find the same jealousy prevailing above a century afterwards ^g, when the nobility declared with a kind of prophetic spirit, “ that the realm of
“ England hath never been unto this hour, neither by the consent of our lord the king and
“ the lords of parliament shall it ever be, ruled
“ or governed by the civil law ^h.” And of this temper between the clergy and laity many more instances might be given.

WHILE things were in this situation, the clergy, finding it impossible to root out the municipal law, began to withdraw themselves by degrees from the temporal courts ; and to that end, very early in the reign of king Henry the third, episcopal constitutions were published ⁱ, forbid-

^f Stat. Merton. 20 Hen. 3. c. 9. *Et omnes comites & barones una voce responderunt, quod nolunt leges Angliae mutare, quae hucusque usitatae sunt & approbatae.* ^g 11 Ric. 2.

^h SELDEN. Jan. Anglor. l. 2. §. 43. in Fortesc. c. 33.

ⁱ SPELMAN. Concil. A.D. 1217. WILKINS, vol. 1. p. 574, 599. ding

ding all ecclesiastics to appear as advocates *in foro saeculari*; nor did they long continue to act as judges there, not caring to take the oath of office which was then found necessary to be administered, that they should in all things determine according to the law and custom of this realm^k; though they still kept possession of the high office of chancellor, an office then of little juridical power; and afterwards, as it's business increased by degrees, they modelled the process of the court at their own discretion.

BUT wherever they retired, and wherever their authority extended, they carried with them the same zeal to introduce the rules of the civil, in exclusion of the municipal law. This appears in a particular manner from the spiritual courts of all denominations, from the chancellor's courts in both our universities, and from the high court of chancery before-mentioned; in all of which the proceedings are to this day in a course much conformed to the civil law: for which no tolerable reason can be assigned, unless that these courts were all under the immediate direction of the popish ecclesiastics, among whom it was a point of religion to exclude the municipal law; pope Inno-

^k SELDEN. in Fletam. 9. 3.

cent the fourth having¹ forbidden the very reading of it by the clergy, because it's decisions were not founded on the imperial constitutions, but merely on the customs of the laity. And if it be considered, that our universities began about that period to receive their present form of scholastic discipline; that they were then, and continued to be till the time of the reformation, entirely under the influence of the popish clergy; (sir John Mason the first protestant, being also the first lay, chancellor of Oxford) this will lead us to perceive the reason, why the study of the roman laws was in those days of bigotry^m

¹ M. PARIS ad A. D. 1254.

^m There cannot be a stronger instance of the absurd and superstitious veneration that was paid to these laws, than that the most learned writers of the times thought they could not form a perfect character, even of the blessed virgin, without making her a civilian and a canonist. Which Albertus Magnus, the renowned dominican doctor of the thirteenth century, thus proves in his *Summa de laudibus christiferae virginis* (*divinum magis quam humanum opus*) qu. 23. §. 5. "Item quod jura civilia, & leges, & decreta scivit in summo, probatur hoc modo: sapientia advocati manifestatur in tribus; unum, quod obtineat omnia contra judicem justum & sapientem; secundo, quod contra adversarium astutum & sagacem; tertio, quod in causa desperata: sed beatissima virgo, contra judicem sapientissimum, Dominum; contra adversarium callidissimum, dyabolum; in causa nostra desperata; sententiam optatam obtinuit." To which an eminent franciscan, two centuries afterwards, Bernardinus de Busti (*Mariale*, part. 4. serm. 9.) very gravely subjoins this note. "Nec videtur incongruum mulieres habere peritiam juris. Legitur enim de uxore Joannis An-

pursued with such alacrity in these seats of learning; and why the common law was entirely despised, and esteemed little better than heretical.

AND, since the reformation, many causes have conspired to prevent it's becoming a part of academical education. As, first, long usage and established custom; which, as in every thing else, so especially in the forms of scholastic exercise, have justly great weight and authority. Secondly, the real intrinsic merit of the civil law, considered upon the footing of reason and not of obligation, which was well known to the instructors of our youth; and their total ignorance of the merit of the common law, though it's equal at least, and perhaps an improvement on the other. But the principal reason of all, that has hindered the introduction of this branch of learning, is, that the study of the common law, being banished from hence in the times of popery, has fallen into a quite different channel, and has hitherto been wholly cultivated in another place. But as this long usage and established custom, of ignorance in the laws of the land, begin now to be thought unreasonable;

*“ drene glossatoris, quod tantam peritiam in utroque jure habuit,
“ ut publice in scholis legere ausa sit.*

and

and as by this means the merit of those laws will probably be more generally known; we may hope that the method of studying them will soon revert to it's antient course, and the foundations at least of that science will be laid in the two universities; without being exclusively confined to the chanel which it fell into at the times I have been just describing.

FOR, being then entirely abandoned by the clergy, a few stragglers excepted, the study and practice of it devolved of course into the hands of laymen; who entertained upon their parts a most hearty aversion to the civil lawⁿ, and made no scruple to profess their contempt, nay even their ignorance^o of it, in the most public man-

ⁿ FORTESC. de laud. LL. c. 23. ^o This remarkably appeared in the case of the abbot of Torun, M. 22 E. 3. 14. who had caused a certain prior to be summoned to answer at Avignon for erecting an oratory *contra inhibitionem novi operis*; by which words Mr Selden, (*in Flet.* 8. 5.) very justly understands to be meant the title *de novi operis nuntiatione* both in the civil and canon laws, (Ff. 39. 1. C. 8. 11. and Decretal. not Extrav. 5. 32.) whereby the erection of any new buildings in prejudice of more antient ones was prohibited. But Skipwith the king's serjeant, and afterwards chief baron of the exchequer, declares them to be flat nonsense; "*in ceux parolx, contra inhibitionem novi operis, ny ad pas entendment:*" and justice Schardehow mends the matter but little by informing him, that they signify a restitution *in their law*; for which reason he very sagely resolves to pay no sort of regard to them. "*Ceo n'est que un restitution en leur ley, pur que a ceo n'avomus regard, &c.*"

ner. But still, as the ballance of learning was greatly on the side of the clergy, and as the common law was no longer *taught*, as formerly, in any part of the kingdom, it must have been subjected to many inconveniences, and perhaps would have been gradually lost and overrun by the civil, (a suspicion well justified from the frequent transcripts of Justinian to be met with in Bracton and Fleta) had it not been for a peculiar incident, which happened at a very critical time, and contributed greatly to it's support.

THE incident I mean was the fixing the court of common pleas, the grand tribunal for disputes of property, to be held in one certain spot; that the seat of ordinary justice might be permanent and notorious to all the nation. Formerly that, in conjunction with all the other superior courts, was held before the king's capital justiciary of England, in the *aula regis*, or such of his palaces wherein his royal person resided, and removed with his household from one end of the kingdom to the other. This was found to occasion great inconvenience to the suitors; to remedy which it was made an article of the great charter of liberties, both that of king John and king Henry the third^p, that

^p C. 11.

“com-

“common pleas should no longer follow the “king’s court, but be held in some certain “place:” in consequence of which they have ever since been held (a few necessary removals in times of the plague excepted) in the palace of Westminster only. This brought together the professors of the municipal law, who before were dispersed about the kingdom, and formed them into an aggregate body; whereby a society was established of persons, who (as Spelman^a observes) addicting themselves wholly to the study of the laws of the land, and no longer considering it as a mere subordinate science for the amusement of leisure hours, soon raised those laws to that pitch of perfection, which they suddenly attained under the auspices of our english Justinian, king Edward the first.

IN consequence of this lucky assemblage, they naturally fell into a kind of collegiate order; and, being excluded from Oxford and Cambridge, found it necessary to establish a new university of their own. This they did by purchasing at various times certain houses (now called the inns of court and of chancery) between the city of Westminster, the place of holding the king’s courts, and the city of Lon-

^a Glossar. 334.

don; for advantage of ready access to the one, and plenty of provisions in the other'. Here exercises were performed, lectures read, and degrees were at length conferred in the common law, as at other universities in the canon and civil. The degrees were those of barristers (first stiled apprentices^s from *apprendre*, to learn) who answered to our bachelors; as the state and degree of a serjeant^t, *servientis ad legem*, did to that of doctor.

^t FORTESC. c. 48.

^s Apprentices or Barristers seem to have been first appointed by an ordinance of king Edward the first in parliament, in the 20th year of his reign. (SPELM. Gloss. 37. DUGDALE's Orig. jurid. 55.)

^t The first mention I have met with in our lawbooks of serjeants or counters, is in the statute of Westm. 1. 3 Edw. 1. c. 29. and in HORN's Mirror, c. 1. §. 10. c. 2. §. 5. c. 3. §. 1. in the same reign. But M. PARIS in his life of John II, abbot of St. Albans, which he wrote in 1255, 39 Hen. 3. speaks of advocates at the common law, or countors (*quos banci narratores vulgariter appellamus*) as an order of men well known. And we have an example of the antiquity of the coif in the same author's history of England, A. D. 1259, in the case of one William de Bussy; who, being called to account for his great knavery and mal-practises, claimed the benefit of his orders, which were totally unsuspected; and to that end *voluit ligamenta coisae suae solvere, ut palam monstraret se tonsuram habere clericalem; sed non est permixtus.* — *Satelles vero eum arripiens, non per coisae ligamina sed per guttur eum apprehendens, traxit ad carcerem.* And hence Sir H. Spelman conjectures, (Glossar. 335.) that coifs were introduced to hide the tonsure of such renegade clerks, as were still tempted to remain in the secular courts in the quality of advocates or judges, notwithstanding their prohibition by canon.

THE crown seems to have soon taken under its protection this infant seminary of common law; and, the more effectually to foster and cherish it, king Henry the third in the nineteenth year of his reign, issued out an order directed to the mayor and sheriffs of London, commanding that no regent of any law schools *within* that city should for the future teach law therein^u. The word, law, or *leges*, being a general term, may create some doubt at this distance of time whether the teaching of the civil law, or the common, or both, is hereby restrained. But in either case it tends to the same end. If the civil law only is prohibited, (which is Mr Selden's^w opinion) it is then a retaliation upon the clergy, who had excluded the common law from *their* seats of learning. If the municipal law be also included in the restriction, (as sir Edward Coke^x understands it, and which the words seem to import) then the intention is evidently this; by preventing private teachers within the walls of the city, to collect all the common lawyers into the one public university, which was newly instituted in the suburbs.

^u *Ne aliquis scholas regens de legibus in eadem civitate de caetero ibidem leges doceat.* ^w In Flet. 8. 2. ^x 2 Inst. proöm.

IN this juridical university (for such it is insisted to have been by Fortescue^y and sir Edward Coke^z) there are two sorts of collegiate houses; one called inns of chancery, in which the younger students of the law used to be placed, “learning and studying, says Fortescue^a, “the originals and as it were the elements of “the law; who, profiting therein, as they grow “to ripeness so are they admitted into the “greater inns of the same study, called the inns “of court.” And in these inns of both kinds, he goes on to tell us, the knights and barons, with other grandees and noblemen of the realm, did use to place their children, though they did not desire to have them thoroughly learned in the law, or to get their living by it’s practice: and that in his time there were about two thousand students at these several inns, all of whom he informs us were *fili nobilem*, or gentlemen born.

HENCE it is evident that (though under the influence of the monks our universities neglected this study, yet) in the time of Henry the sixth it was thought highly necessary and was the universal practice, for the young nobility and gen-

^y C. 49.^z 3 Rep. pref.^a *ibid.*

try to be instructed in the originals and elements of the laws. But by degrees this custom has fallen into disuse; so that in the reign of queen Elizabeth sir Edward Coke ^b does not reckon above a thousand students, and the number at present is very considerably less. Which seems principally owing to these reasons: first, because the inns of chancery being now almost totally filled by the inferior branch of the profession, they are neither commodious nor proper for the resort of gentlemen of any rank or figure; so that there are now very rarely any young students entered at the inns of chancery: secondly, because in the inns of court all sorts of regimen and academical superintendance, either with regard to morals or studies, are found impracticable and therefore entirely neglected: lastly, because persons of birth and fortune, after having finished their usual courses at the universities, have seldom leisure or resolution sufficient to enter upon a new scheme of study at a new place of instruction. Wherefore few gentlemen now resort to the inns of court, but such for whom the knowledge of practice is absolutely necessary; such, I mean, as are intended for the profession: the rest of our gentry, (not to say our nobility also) having usually retired to their

^b 3 Rep. Pref.

estates,

estates, or visited foreign kingdoms, or entered upon public life, without any instruction in the laws of the land; and indeed with hardly any opportunity of gaining instruction, unless it can be afforded them in these seats of learning.

AND that these are the proper places, for affording assistances of this kind to gentlemen of all stations and degrees, cannot (I think) with any colour of reason be denied. For not one of the objections, which are made to the inns of court and chancery, and which I have just enumerated, will hold with regard to the universities. Gentlemen may here associate with gentlemen of their own rank and degree. Nor are their conduct and studies left entirely to their own discretion; but regulated by a discipline so wise and exact, yet so liberal, so sensible and manly, that their conformity to it's rules (which does at present so much honour to our youth) is not more the effect of constraint, than of their own inclinations and choice. Neither need they apprehend too long an avocation hereby from their private concerns and amusements, or (what is a more noble object) the service of their friends and their country. This study will go hand in hand with their other pursuits:

it

it will obstruct none of them; it will ornament and assist them all.

BUT if, upon the whole, there are any, still wedded to monastic prejudice, that can entertain a doubt how far this study is properly and regularly *academical*, such persons I am afraid either have not considered the constitution and design of an university, or else think very meanly of it. It must be a deplorable narrowness of mind, that would confine these seats of instruction to the limited views of one or two learned professions. To the praise of this age be it spoken, a more open and generous way of thinking begins now universally to prevail. The attainment of liberal and genteel accomplishments, though not of the intellectual sort, has been thought by our wisest and most affectionate patrons ^c, and very lately by the whole university ^d, no small improvement of our antient plan of education;

^c Lord Chancellor CLARENDON, in his dialogue of education, among his tracts, p. 325. appears to have been very solicitous, that it might be made "a part of the ornament of our learned academies to teach the qualities of riding, dancing, and fencing, "at those hours when more serious exercises should be intermitted."

^d By accepting in full convocation the remainder of lord Clarendon's history from his noble descendants, on condition to apply the profits arising from it's publication to the establishment of a *manage* in the university.

and

and therefore I may safely affirm that nothing (how *unusual* soever) is, under due regulations, improper to be *taught* in this place, which is proper for a gentleman to *learn*. But that a science, which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish, or redress the other; which employs in it's theory the noblest faculties of the soul, and exerts in it's practice the cardinal virtues of the heart; a science, which is universal in it's use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should have ever been deemed unnecessary to be studied in an university, is matter of astonishment and concern. Surely, if it were not before an object of academical knowlege, it was high time to make it one; and to those who can doubt the propriety of it's reception among us (if any such there be) we may return an answer in their own way; that ethics are confessedly a branch of academical learning, and Aristotle *himself has said*, speaking of the laws of his own country, that jurisprudence or the knowlege of those laws is the principal and most perfect branch of ethics.

^c Τελεία μάλιστα ἀρετή, ὅτι τῆς τελείας ἀρετῆς χρῆσις ἐστ. Ethic. ad Nicomach. l. 5. c. 3.

FROM a thorough conviction of this truth, our munificent benefactor Mr VINER, having employed above half a century in amassing materials for new modelling and rendering more commodious the rude study of the laws of the land, consigned both the plan and execution of these his public-spirited designs to the wisdom of his parent university. Resolving to dedicate his learned labours “to the benefit of posterity and “the perpetual service of his country,” he was sensible he could not perform his resolutions in a better and more effectual manner, than by extending to the youth of this place those assistances, of which he so well remembered and so heartily regretted the want. And the sense, which the university has entertained of this ample and most useful benefaction, must appear beyond a doubt from their gratitude in receiving it with all possible marks of esteem; from their alacrity and unexampled dispatch in carrying it into execution; and, above all, from the laws and constitutions by which they have effectually guarded it from the neglect and abuse to which such institutions are liable. We have seen an universal emulation, who best should understand, or most faithfully pursue, the designs

* See the preface to the eighteenth volume of his abridgment.

of our generous patron: and with pleasure we recollect, that those who are most distinguished by their quality, their fortune, their station, their learning, or their experience, have appeared the most zealous to promote the success of Mr VINER's establishment.

THE advantages that might result to the science of the law itself, when a little more attended to in these seats of knowledge, perhaps would be very considerable. The leisure and abilities of the learned in these retirements might either suggest expedients^s, or execute those dictated by wiser heads, for improving it's method, retrenching it's superfluities, and reconciling the little contrarieties, which the practice of many centuries will necessarily create in any human system: a task, which those who are deeply employed in business, and the more active scenes of profession, can hardly condescend to engage in. And as to the interest, or (which is the same) the reputation of the universities themselves, I may venture to pronounce that if ever this study should arrive to any tolerable perfection either here or at Cambridge, the nobility and gentry of this kingdom would not shorten their residence upon this account, nor perhaps enter-

^s See lord BACON's proposals and offer of a digest.

tain a worse opinion of the benefits of academical education. Neither should it be considered as a matter of light importance, that while we thus extend the pomœria of university learning, and adopt a new tribe of citizens within these philosophical walls, we interest a very numerous and very powerful profession in the preservation of our rights and revenues.

FOR I think it is past dispute that those gentlemen, who resort to the inns of court with a view to pursue the profession, will find it expedient (whenever it is practicable) to lay the previous foundations of this, as well as every other science, in one of our learned universities. We may appeal to the experience of every sensible lawyer, whether any thing can be more hazardous or discouraging than the usual entrance on the study of the law. A raw and unexperienced youth, in the most dangerous season of life, is transplanted on a sudden into the midst of allurements to pleasure, without any restraint or check but what his own prudence can suggest; with no public direction in what course to pursue his enquiries; no private assistance to remove the distresses and difficulties, which will always embarrass a beginner. In this situation he is expected to sequester himself from the world, and
by

by a tedious lonely process to extract the theory of law from a mass of undigested learning; or else by an assiduous attendance on the courts to pick up theory and practice together, sufficient to qualify him for the ordinary run of business. How little therefore is it to be wondered at, that we hear of so frequent miscarriages; that so many gentlemen of bright imaginations grow weary of so unpromising a search^h, and addict themselves wholly to amusements, or other less innocent pursuits; and that so many persons of moderate capacity confuse themselves at first setting out, and continue ever dark and puzzled during the remainder of their lives!

THE evident want of some assistance in the rudiments of legal knowledge, has given birth to a practice, which, if ever it had grown to be general, must have proved of extremely pernicious consequence: I mean the custom, by some so very warmly recommended, to drop all liberal education, as of no use to lawyers; and to

^h Sir HENRY SPELMAN, in the preface to his glossary, gives us a very lively picture of his own distress upon this occasion. "*Emisit me mater Londinum, juris nostri capeffendi gratia; cujus cum vestibulum salutassem, reperissemque linguam peregrinam, dialectum barbaram, methodum inconcinnam, molem non ingentem solum sed perpetuis humeris sustinendam, excidit mihi (fateor) animus, &c.*"

place them, in it's stead, at the desk of some skilful attorney; in order to initiate them early in all the depths of practice, and render them more dextrous in the mechanical part of business. A few instances of particular persons, (men of excellent learning, and unblemished integrity) who, in spite of this method of education, have shone in the foremost ranks of the bar, have afforded some kind of sanction to this illiberal path to the profession, and biased many parents, of shortsighted judgment, in it's favour: not considering, that there are some geniuses, formed to overcome all disadvantages, and that from such particular instances no general rules can be formed; nor observing, that those very persons have frequently recommended by the most forcible of all examples, the disposal of their own offspring, a very different foundation of legal studies, a regular academical education. Perhaps too, in return, I could now direct their eyes to our principal seats of justice, and suggest a few hints, in favour of university learning: — but in these all who hear me, I know, have already prevented me.

MAKING therefore due allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the
e bar,

bar, in subservience to attorneys and solicitorsⁱ, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him: *ita lex scripta est*^k is the utmost his knowledge will arrive at; he must never aspire to form, and seldom expect to comprehend, any arguments drawn *a priori*, from the spirit of the laws and the natural foundations of justice.

NOR is this all; for (as few persons of birth, or fortune, or even of scholastic education, will submit to the drudgery of servitude and the manual labour of copying the trash of an office) should this infatuation prevail to any considerable degree, we must rarely expect to see a gentleman of distinction or learning at the bar. And what the consequence may be, to have the interpretation and enforcement of the laws (which include the entire disposal of our properties, liberties, and lives) fall wholly into the hands of obscure or illiterate men, is matter of very public concern.

ⁱ See bishop KENNET's life of Somner. p. 67.

^k Ff. 40. 9. 12.

THE inconveniences here pointed out can never be effectually prevented, but by making academical education a previous step to the profession of the common law, and at the same time making the rudiments of the law a part of academical education. For sciences are of a sociable disposition, and flourish best in the neighbourhood of each other: nor is there any branch of learning, but may be helped and improved by assistances drawn from other arts. If therefore the student in our laws hath formed both his sentiments and style, by perusal and imitation of the purest classical writers, among whom the historians and orators will best deserve his regard; if he can reason with precision, and separate argument from fallacy, by the clear simple rules of pure unsophisticated logic; if he can fix his attention, and steadily pursue truth through any the most intricate deduction, by the use of mathematical demonstrations; if he has enlarged his conceptions of nature and art, by a view of the several branches of genuine, experimental, philosophy; if he has impressed on his mind the sound maxims of the law of nature, the best and most authentic foundation of human laws; if, lastly, he has contemplated those maxims reduced to a practical system in

the laws of imperial Rome ; if he has done this or any part of it, (though all may be easily done under as able instructors as ever graced any seats of learning) a student thus qualified may enter upon the study of the laws with incredible advantage and reputation. And if, at the conclusion, or during the acquisition of these accomplishments, he will afford himself here a year or two's farther leisure, to lay the foundation of his future labours in a solid scientific method, without thirsting too early to attend that practice which it is impossible he should rightly comprehend, he will afterwards proceed with the greatest ease, and will unfold the most intricate points with an intuitive rapidity and clearness.

I SHALL not insist upon such motives as might be drawn from principles of oeconomy, and are applicable to particulars only : I reason upon more general topics. And therefore to the qualities of the head, which I have just enumerated, I cannot but add those of the heart ; affectionate loyalty to the king, a zeal for liberty and the constitution, a sense of real honour, and well grounded principles of religion ; as necessary to form a truly valuable english lawyer, a Hyde, a Hale, or a Talbot. And, whatever the ignorance of some, or unkindness of others, may
have

have heretofore untruly suggested, experience will warrant us to affirm, that these endowments of loyalty and public spirit, of honour and religion, are no where to be found in more high perfection than in the two universities of this kingdom.

BEFORE I conclude, it may perhaps be expected that I lay before you a short and general account, of the method I propose to follow in endeavouring to execute the trust you have been pleased to repose in my hands. And in these solemn lectures, which are ordained to be read at the entrance of every term, (more perhaps to do public honour to this laudable institution, than for the private instruction of individuals¹) I presume it will best answer the intent of our benefactor and the expectation of this learned body, if I attempt to illustrate at times such detached titles of the law, as are the most easy to be understood, and most capable of historical or critical ornament. But in reading the complete course, which is annually consigned to my care, a more regular method will be necessary; and, till a better is proposed, I shall take the liberty to follow the same that I have already submitted to the public. To fill up and finish that outline

¹ See LOWTH's *Oratio Crewiana*, p. 365.

with

with propriety and correctness, and to render the whole intelligible to the uninformed minds of beginners, (whom we are too apt to suppose acquainted with terms and ideas, which they never had opportunity to learn) this must be my ardent endeavour, tho' by no means my promise to accomplish. You will permit me however very briefly to describe, rather what I conceive an academical expounder of the laws should do, than what I have ever known to be done.

HE should consider his course as a general map of the law, marking out the shape of the country, it's connexions and boundaries, it's greater divisions and principal cities: it is not his business to describe minutely the subordinate limits, or to fix the longitude and latitude of every inconsiderable hamlet. His attention should be engaged, like that of the readers in Fortescue's inns of chancery, "in tracing out the originals and as it were the elements of the law." For if, as Justinian^m has observed, the tender understanding of the student be loaded at the first with a multitude and variety of matter, it will either occasion him to desert his studies, or will carry him heavily through them, with much labour, delay, and despondence. These ori-

^m Inst. I. 1. 2.

ginals should be traced to their fountains, as well as our distance will permit; to the customs of the Britons and Germans, as recorded by Caesar and Tacitus; to the codes of the northern nations on the continent, and more especially to those of our own Saxon princes; to the rules of the Roman law, either left here in the days of Papinian, or imported by Vacarius and his followers; but, above all, to that inexhaustible reservoir of legal antiquities and learning, the feudal law, or, as Spelmanⁿ has entitled it, the law of nations in our western orb. These primary rules and fundamental principles should be weighed and compared with the precepts of the law of nature, and the practice of other countries; should be explained by reasons, illustrated by examples, and confirmed by undoubted authorities; their history should be deduced, their changes and revolutions observed, and it should be shewn how far they are connected with, or have at any time been affected by, the civil transactions of the kingdom.

A PLAN of this nature, if executed with care and ability, cannot fail of administering a most useful and rational entertainment to students of all ranks and professions; and yet it must be

ⁿ Of Parliaments, 57.

confessed that the study of the laws is not merely a matter of amusement: for as a very judicious writer ° has observed upon a similar occasion, the learner “will be considerably disappointed “if he looks for entertainment without the expence of attention.” An attention, however, not greater than is usually bestowed in mastering the rudiments of other sciences, or sometimes in pursuing a favorite recreation or exercise. And this attention is not equally necessary to be exerted by every student upon every occasion. Some branches of the law, as the formal process of civil suits, and the subtle distinctions incident to landed property, which are the most difficult to be thoroughly understood, are the least worth the pains of understanding, except to such gentlemen as intend to pursue the profession. To others I may venture to apply, with a slight alteration, the words of sir John Fortescue P, when first his royal pupil determines to

° Dr TAYLOR's preface to Elem. of civil law.

P *Tibi, princeps, necesse non erit mysteria legis Angliae longo disciplinatu rimare. Sufficiet tibi, — et satis denominari legista mereberis, si legum principia & causas, usque ad elementa, discipuli more indagaveris. — Quare tu, princeps serenissime, parvo tempore, parva industria, sufficienter eris in legibus regni Angliae eruditus, dummodo ad ejus apprehensionem tu conferas animum tuum. — Nosco namque ingenii tui perspicacitatem, quo audacter pronuntio quod in legibus illis (licet earum peritia, qualis judicibus necessaria est, vix viginti annorum lucubrationibus acquiratur (tu doctrinam*
principi

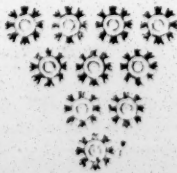
engage in this study. “It will not be necessary
“for a gentleman, as such, to examine with a
“close application the critical niceties of the law.
“It will fully be sufficient and he may well
“enough be denominated a lawyer, if under the
“instruction of a master he traces up the prin-
“ciples and grounds of the law, even to their
“original elements. Therefore in a very short
“period, and with very little labour, he may be
“sufficiently informed in the laws of his coun-
“try, if he will but apply his mind in good
“earnest to receive and apprehend them. For,
“though such knowlege as is necessary for a
“judge is hardly to be acquired by the lucu-
“brations of twenty years, yet with a genius
“of tolerable perspicacity, that knowlege which
“is fit for a person of birth or condition may
“be learned in a single year, without neglect-
“ing his other improvements.”

To the few therefore (the very few, I am
persuaded,) that entertain such unworthy notions
of an university, as to suppose it intended for
mere dissipation of thought; to such as mean

*principi congruam in anno uno sufficienter nancisceris; nec interim
militarem disciplinam, ad quam tam ardentem anhelas, negliges;
sed ea, recreationis loco, etiam anno illo tu ad libitum perfrueris.*
c. 8.

only

only to while away the aukward interval from childhood to twenty one, between the restraints of the school and the licentiousness of politer life, in a calm middle state of mental and of moral inactivity; to these Mr VINER gives no invitation to an entertainment which they never can relish. But to the long and illustrious train of noble and ingenuous youth, who are not more distinguished among us by their birth and possessions, than by the regularity of their conduct and their thirst after useful knowlege, to these our benefactor has consecrated the fruits of a long and laborious life, worn out in the duties of his calling; and will joyfully reflect (if such reflexions can be now the employment of his thoughts) that he could not more effectually have benefited posterity, or contributed to the service of the public, than by founding an institution which may instruct the rising generation in the wisdom of our civil polity, and inform them with a desire to be still better acquainted with the laws and constitution of their country.



A N

A N A L Y S I S

O F T H E

L A W S O F E N G L A N D .

ST. J. A. A.

ST. J. A. A.

C O N T E N T S

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The RIGHTS of Things.

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AN
ANALYSIS
OF THE
LAWS OF ENGLAND.

BOOK THE FIRST.

CHAPTER I.

Of the Nature of LAWS in general.

1.

LAW is a Rule of Action, prescribed by a superior Power.

2.

NATURAL Law is the Rule of HUMAN Action, prescribed by the Creator, and discoverable by the Light of Reason.

3.

The DIVINE, OR REVEALED, Law (considered as a Rule of Action) is also the Law of Nature, imparted by God himself.

A

4. The

4.

The Law of NATIONS is that which regulates the Conduct and mutual Intercourse of independent States with each other, by Reason and natural Justice.

5.

MUNICIPAL, or CIVIL, Law is the Rule of civil Conduct, prescribed by the supreme Power in a State, commanding what is RIGHT, and prohibiting what is WRONG.

6.

SOCIETY is formed for the Protection of Individuals; and STATES, or Government, for the Preservation of Society.

7.

In all States there is an absolute SUPREME Power, to which the Right of Legislation belongs; and which, by the singular Constitution of these Kingdoms, is vested in the King, Lords, and Commons.

8.

The PARTS of a Law are, 1. The DECLARATORY; which defines what is Right, and Wrong. 2. The DIRECTORY; which consists in commanding the Observation of Right, or prohibiting the Commission of Wrong. 3. The REMEDIAL; or Method of recovering private Rights, and redressing private Wrongs. 4. The VINDICATORY Sanction of Punishments for public Wrongs; wherein consists the most forcible Obligation of human Laws.

9. To

9.

TO INTERPRET a Law, we must enquire after the Will of the Maker: Which may be collected either from the Words, the Context, the Subject-matter, the Effects and Consequence, or the Spirit and Reason of the Law.

10.

From the latter Method of Interpretation arises EQUITY, or the Correction of that wherein the Law (by reason of its Universality) is deficient.

CHAP. II.

Of the GROUNDS and FOUNDATION of the Laws of ENGLAND.

1.

THE LAWS of ENGLAND are of two Kinds; the UNWRITTEN or COMMON Law, and the WRITTEN or STATUTE Law.

2.

The UNWRITTEN Law includes, 1. General Customs. 2. Particular Customs. 3. Particular Laws.

3.

GENERAL CUSTOMS, or the COMMON Law properly so called, are founded upon immemorial universal Usage, whereof judicial Decisions are the Evidence; which Decisions are preserved in the public

A 2

Records,

Records, explained in the Year-Books and Reports, and digested by Writers of approved Authority.

4.

PARTICULAR CUSTOMS are those which are only in Use within some peculiar Districts; as Gavel-kind, the Customs of LONDON, &c.

5.

These — 1. must be proved to exist; — 2. must appear to be legal; that is, immemorial, continued, peaceable, reasonable, certain, compulsory, beneficial, and consistent; — 3. must, when allowed, receive a strict Construction.

6.

PARTICULAR LAWS are such as, by special Custom, are adopted and used only in certain peculiar Courts, under the Superintendence and Controul of the common and statute Law; namely, the ROMAN CIVIL and CANON LAWS.

7.

The WRITTEN or STATUTE LAWS are the Acts which are made by the King, Lords, and Commons, in Parliament; to supply the Defects, or amend what is amiss, of the unwritten Law.

8.

In order to moderate the Rigor of both the unwritten and written Law, in Matters of private Right, it is the Office of EQUITY to interpose.

C H A P. III.

*Of the COUNTRIES subject to the Laws of
ENGLAND.*

I.

THE LAWS of ENGLAND are not received in their full Extent in any other Territories, besides the Kingdom of ENGLAND, and the Dominion of WALES; which have, in most respects, an entire Community of Laws.

2.

SCOTLAND, notwithstanding the Union, retains it's own municipal LAWS; though subject to Regulation by the BRITISH Parliament.

3.

BERWICK is subject to the Scots Law, but bound by all Acts of Parliament.

4.

IRELAND is a distinct subordinate Kingdom, governed by the common Law of ENGLAND; but not bound by modern Acts of the BRITISH Parliament, unless particularly named.

5.

The Isle of MAN, the NORMAN Isles, (as GUERNSEY, &c,) and our PLANTATIONS abroad, are governed by their own LAWS; but are bound by Acts of the BRITISH Parliament, if specially named therein.

6. The

6.

The Territory of ENGLAND is divided, ECCLESIASTICALLY, into Provinces, Dioceses, Archdeaconries, rural Deanries, and Parishes.

7.

The CIVIL Division is, first, into Counties, of which some are palatine; then, sometimes, into Rapes, Lathes, or Trithings; next into Hundreds, or Wapentakes; and, lastly, into Towns, Vills, or Tithings.

C H A P. IV.

*Of the OBJECTS of the LAWS of ENGLAND ;
and, first, of the ABSOLUTE RIGHTS of IN-
DIVIDUALS.*

I.

THE Objects of the LAWS of ENGLAND are,
1. RIGHTS. 2. WRONGS.

2.

RIGHTS are the Rights of PERSONS, or the Rights of THINGS.

3.

The Rights of PERSONS are such as concern, and are annexed to, the Persons of Men : And, when the Person to whom they are due is regarded, they are called (simply) RIGHTS ; but, when we consider the Person FROM whom they are due, they are then denominated DUTIES.

4. PER-

4.

PERSONS are either NATURAL, that is, such as they are formed by Nature; or ARTIFICIAL, that is, created by human Policy, as Bodies politic or CORPORATIONS.

5.

The Rights of NATURAL Persons are, 1. ABSOLUTE, or such as belong to Individuals. 2. RELATIVE, or such as regard Members of Society.

6.

The ABSOLUTE RIGHTS of INDIVIDUALS, regarded by the municipal Laws, (which pay no Attention to DUTIES of the absolute Kind) compose what is called political or civil LIBERTY.

7.

Political or civil LIBERTY is the natural Liberty of Mankind, so far restrained by human Laws as is necessary for the Good of Society.

8.

The absolute Rights, or civil Liberties, of ENGLISHMEN, as frequently declared in Parliament, are principally three; the Right of PERSONAL SECURITY, of PERSONAL LIBERTY, and of PRIVATE PROPERTY.

9.

The Right of PERSONAL SECURITY consists in the legal Enjoyment of Life, Limb, Body, Health, and Reputation.

10. The

10.

The Right of PERSONAL LIBERTY consists in the free Power of Loco-motion, without illegal Restraint or Banishment.

11.

The Right of PRIVATE PROPERTY consists in every Man's free Use and Disposal of his own lawful Acquisitions, without Injury or illegal Diminution.

12.

Besides these three PRIMARY Rights, there are others which are SECONDARY and subordinate; viz. (to preserve the former from unlawful Attacks)

1. The Constitution and Power of Parliaments :
2. The Limitation of the King's Prerogative: — And, (to vindicate them when actually violated)
3. The regular Administration of public Justice :
4. The Right of Petitioning for Redress of Grievances :
5. The Right of Having and Using Arms for Self-Defence.

C H A P. V.

Of the Rights of Persons in PUBLIC RELATIONS; and therein, first, of the PARLIAMENT.

I.

THE RELATIONS of Persons are, I. PUBLIC.
2. PRIVATE. The PUBLIC Relations are those of MAGISTRATES and PEOPLE. MAGISTRATES are SUPREME, OR SUBORDINATE. And of SUPREME Magistrates, in ENGLAND, the PARLIAMENT is the supreme LEGISLATIVE, the KING the supreme EXECUTIVE.

2.

PARLIAMENTS, in some Shape, are of as high Antiquity as the SAXON Government in this Island; and have subsisted, in their present Form, at least five hundred Years.

3.

The Parliament is assembled by the King's Writs, and it's Sitting must not be intermitted above three Years.

4.

It's constituent Parts are the King's Majesty, the Lords spiritual and temporal, and the Commons represented by their Members: Each of which Parts has a negative, or necessary, Voice in making Laws.

5.

With regard to the GENERAL Law of Parliament; — It's Power is absolute: Each House is the
Judge

Judge of it's own Privileges: And all the Members of either House are entitled to the Privilege of Speech, of Person, of their Domesticks, and of their Lands and Goods.

6.

The PECULIAR Privileges of the Lords are to hunt in the King's Forests; to be attended by the Sages of the Law; to make Proxies; to enter Protests; and to regulate the Election of the sixteen Peers of NORTH-BRITAIN.

7.

The PECULIAR Privileges of the Commons are to raise Taxes on the Subject; and to determine the Merits of their own Elections, with regard to the Qualifications of the Electors, and Elected, and the Proceedings at Elections themselves.

8.

Bills are usually twice read in each House, committed, engrossed, and then read a third Time; and when they have obtained the Concurrence of both Houses, and received the royal Assent, they become Acts of Parliament.

9.

The Houses may adjourn themselves; but the King only can prorogue the Parliament.

10.

Parliaments are dissolved, 1. At the King's Will. 2. By the Demise of the Crown, that is, within six Months after. 3. By Length of Time, or having sate for the space of seven Years.

C H A P. VI.

Of the KING ; and, first, of his TITLE.

I.

THE supreme EXECUTIVE Power of this Kingdom is lodged in a single Person ; the KING or QUEEN.

2.

This royal Person may be considered with regard to, 1. His Title. 2. His Dignity. 3. His Duties. 4. His Councils. 5. His royal Family. 6. His Prerogative. 7. His Revenue.

3.

With regard to his TITLE ; The Crown of ENGLAND, by the positive Constitution of the Kingdom, hath ever been descendible, and so continues.

4.

The Crown is descendible in a Course peculiar to itself.

5.

This Course of Descent is subject to Limitation by Parliament.

6.

Notwithstanding such Limitations, the Crown retains its descendible Quality, and becomes hereditary in the Prince to whom it is limited.

7. King

7.

King *EGBERT*, King *CANUTE*, and King *WILLIAM I.* have been successively constituted the common Stocks, or Ancestors, of this Descent.

8.

At the Revolution the Convention of Estates, or representative Body of the Nation, declared, that the Misconduct of King *JAMES II.* amounted to an Abdication of the Government, and that the Throne was thereby *VACANT*.

9.

In consequence of this Vacancy, and from a Regard to the antient Line, the Convention appointed the next protestant Heirs of the Blood royal of King *CHARLES I.* to fill the vacant Throne, in the old Order of Succession; with a temporary Exception, or Preference, to the Person of King *WILLIAM III.*

10.

On the impending Failure of the protestant Line of King *CHARLES I.* (whereby the Throne might again have become vacant) the King and Parliament extended the Settlement of the Crown to the protestant Line of King *JAMES I.* viz. to the Princess *SOPHIA* of *HANOVER*, and the Heirs of her Body, being Protestants: And She is now the common Stock, from whom the Heirs of the Crown must descend.

C H A P. VII.

*Of the KING'S DIGNITY, DUTIES, COUNCILS,
and royal FAMILY.*

I.

THE KING'S DIGNITY consists, 1. In his personal Sovereignty. 2. In his absolute Perfection. 3. In his Perpetuity. 4. In his legal Ubiquity. 5. In that he is bound by no Statute, unless specially named. 6. In that his Deed is a public Record.

2.

The KING'S DUTIES are to govern his People according to Law, to execute Judgment in Mercy, and to maintain the established Religion. These are his Part of the original Contract between himself and the People; founded in the Nature of Society, and expressed in his Oath at the Coronation.

3.

The KING'S COUNCILS are, 1. The Parliament. 2. The Peers. 3. The Judges. 4. The privy Council.

4.

The KING'S royal FAMILY are, 1. The QUEEN, either regnant, consort, or dowager. 2. The Prince and Princess of WALES, and the Princess royal. 3. The other Princes of the Blood.

C H A P. VIII.

Of the KING's PREROGATIVE.

I.

PREROGATIVE is that special Power and Pre-eminence, which the KING hath above other Persons, and out of the ordinary Course of Law, in right of his regal Dignity.

2.

Such PREROGATIVES are either DIRECT, or INCIDENTAL. The INCIDENTAL, arising out of other Matters, are considered as they arise: We now treat only of the DIRECT.

3.

In PREROGATIVE consists the executive Power of Government.

4.

In FOREIGN Concerns; the KING, as the Representative of the Nation, has the Right or PREROGATIVE. 1. Of sending and receiving Embassadors. 2. Of making Treaties. 3. Of proclaiming War or Peace. 4. Of issuing Reprisals. 5. Of granting Safe-Conducts.

5.

In DOMESTIC Affairs; the KING is considered as the General of the Kingdom, and may raise Fleets and Armies, build Forts, and confine his Subjects within the Realm, or recall them from foreign Parts.

6. The

6.

The KING is also the Fountain of Justice, and general Conservator of the Peace; and therefore may erect Courts, prosecute Offenders, pardon Crimes, and issue Proclamations.

7.

He is likewise the Fountain of Honour, of Office, and of Privilege.

8.

He is also the Arbiter of DOMESTIC Commerce; (not of FOREIGN, which is regulated by the Law of Merchants;) and is therefore entitled to the Erection of public Marts, the Regulation of Weights and Measures, and the Coinage or Legitimation of Money.

9.

The KING is, lastly, the supreme Head of the Church; and, as such, regulates Synods, nominates Bishops, and receives Appeals in all ecclesiastical Causes.

C H A P. IX.

Of the KING's ORDINARY REVENUE.

I.

THE KING's REVENUE is either ORDINARY or EXTRAORDINARY. And the ORDINARY is, 1. ECCLESIASTICAL. 2. TEMPORAL.

2.

The KING's ECCLESIASTICAL Revenue consists in, 1. The Custody of the Temporalities of vacant Bishopricks. 2. Corodies and Pensions. 3. Extraparochial Tithes. 4. The first Fruits and Tenths of Benefices.

3.

The KING's ordinary TEMPORAL Revenue consists in, 1. The demesne Lands of the Crown. 2. The hereditary Excise; being Part of the Consideration for the Purchase of his feudal Profits, and the Prerogatives of Purveyance and Pre-emption. 3. An annual Sum issuing from the Duty on Wine Licences; being the Residue of the same Consideration. 4. His Forests. 5. His Courts of Justice. 6. Royal Fish. 7. Wrecks, and Things jetfam, flotfam, and ligam. 8. Royal Mines. 9. Treasure trove. 10. Waifs. 11. Estrays. 12. Forfeitures for Offences, and Deodands. 13. Escheats of Lands. 14. The Custody of Ideots and Lunatics.

C H A P. X.

Of the KING'S EXTRAORDINARY REVENUE.

I.

THE KING'S EXTRAORDINARY REVENUE consists in Aids, Subsidies, and Supplies, granted him by the Commons in Parliament.

2.

Heretofore these were usually raised by Grants of the (nominal) TENTH OR FIFTEENTH Part of the Moveables in every Township; or by SUBSIDIES assessed upon Individuals, with respect to their Lands and Goods.

3.

A new System of Taxation took place soon after the Revolution: Our modern Taxes are therefore,
1. ANNUAL. 2. PERPETUAL.

4.

The ANNUAL Taxes are, 1. The Land Tax, or the antient Subsidy raised upon a new Assessment. 2. The Malt Tax, being an annual Excise on Malt, Mum, Cyder, and Perry.

5.

The PERPETUAL Taxes are, 1. The Customs, or Tonnage and Poundage of all Merchandize exported and imported. 2. The Excise Duty, or inland Imposition, on a great Variety of Commodities. 3. The Salt Duty, or Excise on Salt. 4. The Post Office, or Duty for the Carriage of Letters.

B

5. The

5. The Stamp Duty on Paper, Parchment, &c.
6. The Duty on Houses and Windows. 7. The Duty on Licences for hackney Coaches and Chairs.
8. The Duty on Offices and Pensions.

6.

Part of this Revenue is applied to pay the Interest of the national Debt, till the Principal is discharged by Parliament.

7.

The Produce of these several Taxes were originally separate and SPECIFIC FUNDS, to answer SPECIFIC LOANS upon their respective Credits; but are now consolidated by Parliament into three principal Funds, the AGGREGATE, GENERAL, and SOUTH-SEA Funds, to answer ALL the Debts of the Nation; the public Faith being also superadded, to supply Deficiencies, and strengthen the Security of the Whole.

8.

The Surplusses of these Funds, after paying the Interest of the national Debt, are carried together, and denominated the SINKING Fund: Which, unless otherwise appropriated by Parliament, is annually to be applied towards paying off some Part of the Principal.

9.

But, previous to this, the SINKING Fund is charged to make up the Deficiencies, if any, in the CIVIL LIST; which is the immediate proper Revenue of the Crown, settled by Parliament on the King at his Accession, for defraying the Charges of civil Government.

C H A P.

C H A P. XI.

Of SUBORDINATE *Magistrates.*

I.

SUBORDINATE Magistrates, of the most general Use and Authority, are, 1. SHERIFFS. 2. CORONERS. 3. JUSTICES of the PEACE. 4. CONSTABLES. 5. SURVEYORS of the HIGHWAYS. 6. OVERSEERS of the POOR.

2.

The SHERIFF is the Keeper of each County, annually nominated in due Form by the King; and is (within his County) a Judge, a Conservator of the Peace, a ministerial Officer, and the King's Bailiff.

3.

CORONERS are permanent Officers of the Crown in each County, elected by the Freeholders; whose Office it is to make Enquiry concerning the Death of the King's Subjects, and certain Revenues of the Crown; and also, in particular Cases, to supply the Office of Sheriff.

4.

JUSTICES of the PEACE are Magistrates in each County, statutably qualified, and commissioned by the King's Majesty; with Authority to conserve the Peace; to hear and determine Felonies, and other Misdemeanors; and to do many other Acts, committed to their Charge by particular Statutes.

5.

CONSTABLES are Officers of Hundreds and Townships, appointed at the Leet, and empowered to preserve the Peace, to keep Watch and Ward, and to apprehend Offenders.

6.

SURVEYORS of the HIGHWAYS are Officers appointed annually in every Parish; to remove Annoyances in, and to direct the Reparation of, the public Roads.

7.

OVERSEERS of the POOR are Officers appointed annually in every Parish; to relieve such impotent, and employ such sturdy Poor, as are SETTLED in each Parish, — by Birth; — by Parentage; — by Marriage; — or by forty Days Residence, accompanied with, 1. Notice. 2. Renting a Tenement of ten Pounds annual Value. 3. Paying their assessed Taxations. 4. Serving an annual Office. 5. Hiring and Service for a Year. 6. Apprenticeship. 7. Having a sufficient Estate in the Parish.

C H A P. XII.

*Of the PEOPLE, whether ALIENS, or NATIVES;
and, among the latter, first of the CLERGY.*

I.

THE PEOPLE are either ALIENS, that is, born out of the Dominions, or Allegiance, of the Crown of GREAT BRITAIN; or NATIVES, that is, born within it.

2.

Allegiance is the Duty of all Subjects; being the reciprocal Tie of the People to the Prince, in return for the Protection he affords them; and, in NATIVES, this Duty of Allegiance is natural and perpetual; in ALIENS, is local and temporary only.

3.

The Rights of NATIVES are also natural and perpetual; those of ALIENS local and temporary only; unless they be made Denizens by the King, or naturalized by Parliament.

4.

NATIVES are also either CLERGY, that is, all Persons in holy Orders, or in ecclesiastical Offices; or LAITY, which comprehends the rest of the Nation.

5.

The CLERICAL Part of the Nation, thus defined, are, 1. Archbishops and Bishops. 2. Deans and Chapters. 3. Archdeacons. 4. Rural Deans. 5. Parsons,

5. Parsons, and Vicars; to whom there are generally requisite, holy Orders, Presentation, Institution and Induction. 6. Curates. To which may be added, 7. Churchwardens. 8. Parish Clerks and Sextons.

CHAP. XIII.

Of the LAITY.

I.

THE LAITY are divisible into three States;
CIVIL, MILITARY, and MARITIME.

2.

The CIVIL State (which includes all the Nation, except the Clergy, the Army, and the Navy; and many Individuals among them also;) may be divided into the NOBILITY, and the COMMONALTY.

3.

The NOBILITY are Dukes, Marquesses, Earls, Viscounts, and Barons. These had antiently Duties annexed to their respective Honours: They are created either by Writ, that is, by Summons to Parliament; or by the King's Letters patent, that is, by royal Grant: And they enjoy many Privileges, exclusive of their senatorial Capacity.

4.

The COMMONALTY consist of Knights of the Garter, Knights Bannerets, Baronets, Knights of the

the Bath, Knights Bachelors, Esquires, Gentlemen, Yeomen, Tradefmen, Artificers, and Labourers.

5.

The MILITARY State, by the standing constitutional Law, consists of the Militia of each County, raised from among the People by Lot, officered by the principal Landholders, and commanded by the Lord Lieutenant.

6.

The more disciplined occasional Troops of the Kingdom are kept on foot only from Year to Year, by Parliament; and, during that Period, are governed by martial Law, or arbitrary Articles of War, formed at the Pleasure of the Crown.

7.

The MARITIME State consists of the Officers and Mariners of the BRITISH Navy; who are governed by express and permanent Laws, or the Articles of the Navy, established by Act of Parliament.

C H A P. XIV.

Of the PRIVATE RELATIONS of MASTER and SERVANT, and of HUSBAND and WIFE.

I.

THE PRIVATE, oeconomical, RELATIONS of Persons are those of, 1. MASTER and SERVANT. 2. HUSBAND and WIFE. 3. PARENT and CHILD. 4. GUARDIAN and WARD.

2.

The first Relation may subsist between a MASTER and four Species of SERVANTS; (for Slavery is unknown to our Laws:) viz. 1. Menial Servants; who are HIRED. 2. Apprentices; who are BOUND by Indentures. 3. Labourers; who are casually EMPLOYED. 4. Stewards, Bailiffs, and Factors; who are rather in a MINISTERIAL State.

3.

From this Relation result divers Powers to the Master, and Emoluments to the Servant.

4.

The Master hath a Property in the Service of his Servant; and must be answerable for such Acts as the Servant does by his express, or implied, Command.

5.

The second private Relation is that of MARRIAGE; which includes the reciprocal Rights and Duties of HUSBAND and WIFE.

6. MAR-

6.

MARRIAGE is duly contracted between Persons,
1. Consenting: 2. Free from canonical Impediments, which make it VOIDABLE: 3. Free also from the civil Impediments, — of prior Marriage; — of Want of Age; — of Non-Consent of Parents, &c, where requisite; — and of Want of Reason; either of which make it totally VOID. And it must be celebrated by a Clergyman, in due Form and Place.

7.

Marriage is dissolved, 1. By Death. 2. By Divorce in the spiritual Court; not *a Mensa & Toro* only, but *a Vinculo Matrimonii*, for canonical Cause existing previous to the Contract. 3. By Act of Parliament; as, for Adultery.

8.

By Marriage the Husband and Wife become one Person in Law; which Unity is the principal Foundation of their respective Rights, Duties, and Disabilities.

CHAP. XV.

Of the PRIVATE RELATIONS of PARENT and CHILD, and of GUARDIAN and WARD.

1.

THE third, and most universal, private Relation is that of PARENT and CHILD.

2.

CHILDREN are, 1. LEGITIMATE; being those who are born in lawful Wedlock, or within a competent time after. 2. BASTARDS, being those who are not so.

3.

The Duties of Parents to LEGITIMATE Children are, 1. Maintenance. 2. Protection. 3. Education.

4.

The Power of Parents consists principally in Correction, and Consent to Marriage. Both may after Death be delegated by Will to a Guardian; and the former also, living the Parent, to a Tutor or Master.

5.

The Duties of LEGITIMATE Children to Parents are Obedience, Protection, and Maintenance.

6.

The Duty of Parents to BASTARDS is only that of Maintenance.

7. The

7.

The Rights of a BASTARD are such only as he can acquire; for he is incapable of inheriting any thing.

8.

The fourth private Relation is that of GUARDIAN and WARD, which is plainly derived from the last; these being, during the Continuance of their Relation, reciprocally subject to the same Rights and Duties.

9.

GUARDIANS are of divers Sorts. 1. Guardians by Nature, or the Parents. 2. Guardians for Nurture, assigned by the ecclesiastical Courts. 3. Guardians in Socage, assigned by the common Law. 4. Guardians by Statute, assigned by the Father's Will. All subject to the Superintendance of the Court of Chancery.

10.

FULL AGE in Male or Female for all Purposes is the Age of twenty one Years; (different Ages being allowed for different Purposes;) till which Age the Person is an INFANT.

11.

An INFANT, in respect of his tender Years, hath various Privileges, and various Disabilities in Law: Chiefly with regard to Suits, Crimes, Estates, and Contracts.

C H A P. XVI.

Of Bodies politic, or CORPORATIONS.

I.

BODIES politic, or CORPORATIONS, which are ARTIFICIAL Persons, are established for preserving in perpetual Succession certain Rights, which, being conferred on NATURAL Persons only, would fail in Process of Time.

2.

Corporations are, 1. AGGREGATE, consisting of many Members. 2. SOLE, consisting of one Person only.

3.

Corporations are also either SPIRITUAL, erected to perpetuate the Rights of the Church; or LAY. And the LAY are, 1. CIVIL; erected for many temporal Purposes. 2. ELEEMOSYNARY; erected to perpetuate the Charity of the Founder.

4.

Corporations can only be erected, and named, by virtue of the King's royal Charter.

5.

The Powers incident to all Corporations are, 1. To maintain perpetual Succession. 2. To act in their corporate Capacity like an Individual. 3. To hold Lands, subject to the Statutes of Mortmain. 4. To have a common Seal. 5. To make By-Laws. Which

Which last Power, in spiritual, or eleemosynary Corporations, may be executed by the King or the Founder.

6.

The Duty of Corporations is to answer the Ends of their Institution.

7.

To enforce this Duty, all Corporations may be VISITED: Spiritual Corporations by the Ordinary; Lay Corporations by the Founder, or his Representatives; viz. the civil by the King (who is the *Fundator incipiens* of all) represented in his Court of King's Bench; the eleemosynary by the Endower (who is the *Fundator perficiens* of such) or by his Heirs or Assigns.

8.

Corporations may be dissolved, 1. By Act of Parliament. 2. By the natural Death of all their Members. 3. By Surrender of their Franchises. 4. By Forfeiture of their Charter.



BOOK THE SECOND.

Of the RIGHTS *of* THINGS.

CHAPTER I.

Of DOMINION *over* THINGS REAL; *and, first,*
of CORPOREAL *Hereditaments.*

I.

ALL DOMINION over external Objects has it's
Original from the Gift of the Creator to Man
in general.

2.

The SUBSTANCE of Things was, at first, com-
mon to all Mankind; yet a temporary Property, in
the USE of them, might even then be acquired, and
continued, by OCCUPANCY.

3.

In Process of Time a permanent Property was
established in the SUBSTANCE, as well as the USE,
of Things; which was also originally acquired by
OCCUPANCY only.

4.

Left this Property should determine by the Own-
er's Dereliction, or Death, whereby the Thing
would again become common, Societies have esta-
blished

blished CONVEYANCES, WILLS, and HEIRSHIPS, in order to continue the Property of the first Occupant: And, where by Accident such Property becomes discontinued or unknown, the Thing usually results to the SOVEREIGN of the State, by virtue of the municipal Law.

5.

But of some Things, which are incapable of permanent substantial Dominion, there still subsists only the same transient usufructuary Property, which originally subsisted in all Things.

6.

In this PROPERTY, or exclusive Dominion, consist the RIGHTS of THINGS; which are, 1. Things REAL. 2. Things PERSONAL.

7.

In Things REAL may be considered, 1. Their several KINDS. 2. The TENURES, by which they may be holden. 3. The ESTATES, which may be acquired therein. 4. Their TITLE, or the Means of acquiring and losing them.

8.

All the several KINDS of Things real are reducible to one of these three, viz. LANDS, TENEMENTS, or HEREDITAMENTS; whereof the second includes the first, and the third includes the first and second.

9.

HEREDITAMENTS therefore, or whatever may come to be inherited, (being the most comprehensive
Deno-

Denomination of Things real,) are either CORPOREAL OF INCORPOREAL.

10.

CORPOREAL Hereditaments consist wholly of LANDS, in their largest legal Sense; wherein they include not only the Face of the Earth, but every other Object of Sense adjoining thereto, and subsisting either above or beneath it.

C H A P. II.

Of INCORPOREAL Hereditaments.

1.

INCORPOREAL Hereditaments are Rights issuing out of Things corporeal, or concerning, or annexed to, or exercisable within, the same.

2.

Incorporeal Hereditaments are, 1. ADVOWSONS. 2. TITHES. 3. COMMONS. 4. WAYS. 5. OFFICES. 6. DIGNITIES. 7. FRANCHISES. 8. CORODIES OR PENSIONS. 9. ANNUITIES. 10. RENTS.

3.

An ADVOWSON is a Right of Presentation to an ecclesiastical Benefice; either appendant, or in gross. This may be, 1. Presentative. 2. Collative. 3. Donative.

4.

TITHES are the tenth Part of the Increase yearly arising from the Profits and Stock of Lands, and the

the personal Industry of Mankind. These, by the antient and positive Law of the Land, are due of common Right to the Parson or Vicar; unless specially discharged, 1. By real Composition. 2. By Prescription, either *de Modo decimandi*, or *de non decimando*.

5.

COMMON is a Profit which a Man hath in the Lands of another; being, 1. Common of Pasture; which is either appendant, appurtenant, because of Vicinage, or in gross. 2. Common of Piscary. 3. Common of Turbary. 4. Common of Estovers, or Botes.

6.

WAYS are a Right of passing over another Man's Ground.

7.

OFFICES are the Right to exercise a public, or private, Employment.

8.

For DIGNITIES, which are Titles of Honour, see Book I. Ch. 13.

9.

FRANCHISES are a royal Privilege, or Branch of the King's Prerogative, subsisting in the Hands of a Subject.

10.

CORODIES are Allotments for one's Sustenance; which may be converted into PENSIONS. (See Book I. Ch. 9.)

II.

An ANNUITY is a yearly Sum of Money, charged upon the Person, and not upon the Lands, of the Grantor.

12.

RENTS are a certain Profit issuing yearly out of Lands and Tenements; and are reducible to,
1. Rent-service. 2. Rent-charge. 3. Rent-seck.

C H A P. III.

Of the ANTIENT TENURES of Things real.

I.

THE Doctrine of TENURES is derived from the FEODAL Law; which was planted in EUROPE by it's northern Conquerors, at the Dissolution of the ROMAN Empire.

2.

Pure and PROPER FEUDS were Parcels of Land, allotted by a Chief to his Followers; to be held on the Condition of personally rendering due military Service to their Lord.

3.

These were granted by Investiture; were held under the Bond of Fealty; were inheritable only by Descendants; and could not be transferred without the mutual Consent of the Lord and Vassal.

4. IM-

4.

IMPROPER FEUDS were derived from the other; but differed from them in their Original, their Services and Renders, their Descent, and other Circumstances.

5.

The Lands of ENGLAND were converted into FEUDS, of the improper Kind, soon after the NORMAN Conquest: Which gave Rise to the grand Maxim of Tenure; viz. That all Lands in the Kingdom are HOLDEN, mediately or immediately, of the King.

6.

The Distinction of Tenures consisted in the Nature of their Services: As, 1. CHIVALRY, or KNIGHT-SERVICE; where the Service was free, but uncertain. 2. FREE SOCAGE; where the Service was free, and certain. 3. Pure VILLENAGE; where the Service was base, and uncertain. 4. PRIVILEGED VILLENAGE, or VILLEIN SOCAGE; where the Service was base, but certain.

7.

The most universal antient Tenure was that in CHIVALRY, or by KNIGHT-SERVICE; in which the Tenant of every Knight's Fee was bound, if called upon, to attend his Lord to the Wars. This was granted by Livery, and perfected by Homage and Fealty; which usually drew after them Suit of Court.

8.

The other Fruits and Consequences of the Tenure by Knight-Service were, 1. Aid. 2. Relief. 3. Pri-

mer Seisin. 4. Wardship. 5. Marriage. 6. Escheat. 7. Fines upon Alienation.

9.

GRAND SERJEANTY differed from Chivalry principally in it's Render, or Service; and not in it's Fruits and Consequences.

10.

The personal Service in Chivalry was at length gradually changed into pecuniary Assessments, which were called SCUTAGE or ESCUAGE.

11.

These military Tenures (except the Services of grand Serjeanty) were, at the Restoration of King CHARLES, totally abolished, and reduced to free Socage, by Act of Parliament.

C H A P. IV.

Of the MODERN TENURES of Things real.

1.

FREE SOCAGE is a Tenure by any free, certain, and determinate Service.

2.

This Tenure, the Relic of SAXON Liberty, includes PETIT SERJEANTY, Tenure in BURGAGE, and GAVELKIND.

3.

Free Socage Lands partake strongly of the feudal Nature, as well as those in Chivalry: Being holden;

holden; subject to some Service, — at the least, to Fealty and Suit of Court; subject to Relief, to Wardship, and to Escheat; but not to Marriage; subject also formerly to Aids, primer Seisin, and Fines for Alienation.

4.

PURE VILLENAGE was a precarious and slavish Tenure, at the absolute Will of the Lord, upon uncertain Services of the basest Nature.

5.

From hence, by tacit Consent or Encroachment, have arisen the modern COPYHOLDS, or Tenure by Copy of Court Roll; in which Lands may be still held at the (nominal) Will of the Lord, (but regulated) according to the Custom of the Manor.

6.

These are subject, like Socage Lands, to Services, Relief, and Escheat; and also to Heriots, Wardship, and Fines upon Descent and Alienation,

7.

PRIVILEGED VILLENAGE, or VILLEIN SOCAGE, is an exalted Species of copyhold Tenure, upon base, but certain, Services; subsisting only in the antient Demesnes of the Crown; whence the Tenure is denominated the Tenure in ANTIENT DEMESNE.

8.

These Copyholds, of antient Demesne, have divers Immunities annexed to their Tenure; but are still held by Copy of Court Roll, according to the Custom of the Manor, though not at the Will of the Lord.

9. FRANK-

9.

FRANKALMOIGN is a Tenure by spiritual Services at large; whereby many ecclesiastical and eleemosynary Corporations now hold their Lands and Tenements: Being of a Nature distinct from Tenure by divine Service in certain.

CHAP. V.

Of ESTATES, with respect to their QUANTITY of INTEREST; and, first, of FREEHOLDS of INHERITANCE.

I.

ESTATES in Lands, Tenements, and Hereditaments, are such Interest as the Tenant hath therein; to ascertain which, may be considered, 1. The QUANTITY of INTEREST. 2. The TIME of ENJOYMENT. 3. The NUMBER and CONNEXIONS of the TENANTS.

2.

Estates, with respect to their QUANTITY of INTEREST, or Duration, are either FREEHOLD, or LESS than FREEHOLD.

3.

A FREEHOLD Estate, in Lands, is such as is created by Livery of Seisin at common Law; or, in Tenements of an incorporeal Nature, by what is equivalent thereto.

4. Free-

4.

Freehold Estates are either Estates of INHERITANCE, or NOT of INHERITANCE, viz. for LIFE only: And INHERITANCES are, 1. ABSOLUTE, or FEE SIMPLE. 2. LIMITED FEES.

5.

Tenant in FEE SIMPLE is he that hath Lands, Tenements, or Hereditaments, to hold to him and his Heirs for ever.

6.

LIMITED FEES are, 1. QUALIFIED, or BASE, Fees. 2. Fees CONDITIONAL at the common Law.

7.

QUALIFIED, or BASE, Fees are those which, having a Qualification subjoined thereto, are liable to be defeated when that Qualification is at an end.

8.

CONDITIONAL Fees, at the common Law, were such as were granted to the Donee, and the Heirs of his Body, in exclusion of collateral Heirs.

9.

These were held to be Fees, granted on Condition that the Donee had Issue of his Body; which Condition being once performed by the Birth of Issue, the Donee might immediately aliene the Land: But, the Statute *de Donis* being made to prevent such Alienation, thereupon from the Division of the Fee (by Construction of this Statute) into a particular Estate and a Reversion, the conditional Fees began to be called Fees-TAIL.

10. All

10.

All Tenements real, or favouring of the Realty, are subject to Entails.

11.

Estates tail may be, 1. general, or special; 2. male, or female; 3. given in frank Marriage.

12.

Incident to Estates tail are, 1. Waste. 2. Dower. 3. Curtesy. 4. Bar; — by Fine, Recovery, or lineal Warranty with Affets.

13.

Estates tail are now, by many Statutes and Resolutions of the Courts, almost brought back to the State of conditional Fees at the common Law.

C H A P. VI.

Of FREEHOLDS, NOT *of* INHERITANCE.

1.

FREEHOLDS, NOT OF INHERITANCE, or for LIFE only, are, 1. CONVENTIONAL, or created by the Act of the Parties. 2. LEGAL, or created by Operation of Law.

2.

CONVENTIONAL Estates for LIFE are created by an exprefs Grant for Term of one's own Life, or *pur auter Vie*; or by a general Grant, without expressing any Term at all.

3.

Incident to this, and all other Estates for Life, are Estovers, and Emblements: And to Estates *pur auter Vie* general Occupancy was also incident; as special Occupancy still is, if *cestuy que Vie* survives the Tenant.

4.

LEGAL Estates for LIFE are, 1. Tenancy in TAIL, after POSSIBILITY of Issue EXTINCT. 2. Tenancy by the CURTESY of ENGLAND. 3. Tenancy in DOWER.

5.

Tenancy in TAIL, after POSSIBILITY of Issue EXTINCT, is where an Estate is given in special Tail; and, before Issue had, a Person dies from whose Body the Issue was to spring; whereupon the
Tenant

Tenant (if surviving) becomes Tenant in TAIL, after POSSIBILITY of Issue EXTINCT.

6.

This Estate partakes both of the Incidents to an Estate tail, and those of an Estate for Life.

7.

Tenancy by the CURTESY of ENGLAND is where a Man marries a Woman, seised of an Estate of Inheritance; and by her has Issue, born alive, which was capable of inheriting her Estate; in which case he shall, upon her Death, hold the Tenements for his own Life, as Tenant by the CURTESY.

8.

Tenancy in DOWER is where a Woman marries a Man, seised of an Estate of Inheritance, of which her Issue might by any Possibility have been Heir; and the Husband dies; the Woman is hereupon entitled to DOWER, or one third Part of the Lands and Tenements, to hold for her natural Life.

9.

Dower is either by common Law; by special Custom; *ad Ostium Ecclesiae*; or, *ex Assensu Patris*.

10.

Dower may be forfeited, or barred; particularly by an Estate in JOINTURE.

C H A P. VII.

Of Estates, LESS than FREEHOLD.

I.

ESTATES LESS than FREEHOLD are, 1. Estates for YEARS. 2. Estates at WILL. 3. Estates at SUFFERANCE. 4. Estates on CONDITION.

2.

An Estate for YEARS is where a Man, seised of Lands and Tenements, letteth them to another for a certain Period of Time, which transfers the Interest of the Term; and the Lessee enters thereon, which gives him Possession of the Term, but not legal Seisin of the Land.

3.

Incident to this Estate are Estovers; and also Emblements, if it determines before the full End of the Term.

4.

An Estate at WILL is where Lands are let by one Man to another, to hold at the Will of both Parties; and the Lessee enters thereon.

5.

COPYHOLDS are Estates held at the Will of the Lord, (regulated) according to the Custom of the Manor.

6.

An Estate at SUFFERANCE is where one comes into

into Possession of Land by lawful Title, but keeps it afterwards without any Title at all.

7.

Estates on CONDITION, (which may, or may not, be FREEHOLD) are, 1. On Condition IMPLIED. 2. On Condition EXPRESSED. 3. Estates in GAGE. 4. Estates by STATUTE, merchant or staple. 5. Estates by ELEGIT.

8.

Estates on Condition IMPLIED are where a Grant of an Estate has, from it's Essence and Constitution, a Condition inseparably annexed to it; though none be expressed in Words.

9.

Estates on Condition EXPRESSED are where an express Qualification or Provision is annexed to the Grant of an Estate: On the Breach or Nonperformance of which Conditions, either expressed or implied, the Estate so granted may be defeated.

10.

Estates in GAGE, *in Vadio*, or in Pledge, are Estates granted as a Security for Money lent; being, 1. *In vivo Vadio*, or LIVING GAGE; where the Profits of Land are granted till a Debt be paid, upon which Payment the Grantor's Estate will revive. 2. *In mortuo Vadio*, in DEAD, or MORT GAGE; where an Estate is granted, on Condition to be void at a Day certain, if the Grantor then repays the Money borrowed; on Failure of which, the Estate becomes absolutely dead to the Grantor.

11. Estates

11.

Estates by STATUTE merchant, or STATUTE staple, are also Estates conveyed to Creditors, in pursuance of certain Statutes, till their Profits have discharged the Debt.

12.

Estates by ELEGIT are where, in consequence of a judicial Writ so called, Lands are delivered by the Sheriff to a Plaintiff, till their Profits shall satisfy a Debt adjudged to be due by Law.

C H A P. VIII.

*Of Estates, with respect to their TIME of
ENJOYMENT.*

1.

EStates, with respect to their TIME of ENJOYMENT, are either in immediate POSSESSION, or in EXPECTANCY: Which Estates in EXPECTANCY are created at the same Time, and are Parcel of the same Estates, as those upon which they are expectant. These are, 1. REMAINDERS. 2. REVERSIONS.

2.

A REMAINDER is an Estate limited to take Effect, and be enjoyed, after another PARTICULAR Estate in Possession is determined.

3. There-

3.

Therefore, 1. There must be a precedent particular Estate, in order to support a Remainder. 2. The Remainder must pass out of the Grantor, at the Creation of the particular Estate. 3. The Remainder must vest in the Grantee, during the Continuance, or at the Determination, of the particular Estate.

4.

Remainders are, 1. Vested; where the Estate is fixed to remain to a CERTAIN Person, after the particular Estate is spent. 2. Contingent; where the Estate is limited to take Effect, either to an UNCERTAIN Person, or upon an UNCERTAIN Event.

5.

AN EXECUTORY DEVISE is such a Disposition of Lands, by Will, that no Estate shall vest thereby at the Death of the Devisor, but only upon some future Contingency; without any precedent particular Estate to support it.

6.

A REVERSION is the Residue of an Estate left in the Grantor, to commence in Possession after the Determination of some PARTICULAR Estate granted: To which are incident Fealty, and Rent.

7.

Where two Estates, the one less, the other greater, the one in Possession, the other in Expectancy, meet together in one and the same Person, and in one and the same Right, the less is MERGED in the greater.

C H A P. IX.

*Of Estates, with respect to the NUMBER and
CONNEXIONS of the TENANTS.*

I.

EStates, with respect to the NUMBER and CON-
NEXIONS of their TENANTS, may be held,
1. IN SEVERALTY. 2. IN JOINTENANCY. 3. IN
COPARCENARY. 4. IN COMMON.

2.

An Estate in SEVERALTY is where one Tenant holds it in his own sole Right, without any other Person being joined with him.

3.

An Estate in JOINTENANCY is where an Estate is granted to two or more Persons; in which Case the Law construes them to be JOINTENANTS, unless the Words of the Grant expressly exclude such Construction.

4.

Jointenants have an Unity of Interest, of Title, of Time, and of Possession: They are seised *per my & per tout*; and therefore upon the Decease of one Jointenant, the whole Interest remains to the Survivor.

5.

Jointenancy may be dissolved, by destroying one of it's four constituent Unities.

6. An

6.

An Estate in COPARCENARY is where an Estate of Inheritance descends from the Ancestor to two or more Persons; who are called PARCENERS, and all together make but one Heir.

7.

Parceners have an Unity of Interest, Title, and Possession; but are only seised *per my*, and not *per tout*: Wherefore there is no Survivorship among Parceners.

8.

Incident to this Estate is the Law of HOTCHPOT.

9.

Coparcenary may also be dissolved, by destroying any of it's three constituent Unities.

10.

An Estate in COMMON is where two or more Persons hold Lands, possibly by distinct Titles, and for distinct Interests; but by Unity of Possession, because none knoweth his own Severalty.

11.

Tenants in common have therefore an Unity of Possession, (without Survivorship; being seised *per my*, and not *per tout*;) but no necessary Unity of Title, Time, or Interest.

12.

This Estate may be created, 1. By dissolving the constituent Unities of the two former; 2. By express Limitation in a Grant: And may be destroyed, 1. By uniting the several Titles in one Tenant; 2. By Partition of the Land.

C H A P. X.

Of the TITLE to Things real, with the Means of acquiring and losing it; and, first, of DESCENT.

1.

A TITLE to Things real is the Means whereby a Man cometh to the just Possession of his Property.

2.

Herein may be considered, 1. A mere or naked Possession. 2. The Right of Possession; which is, 1st, an apparent, 2dly, an actual, Right. 3. The mere Right of Propriety. 4. The Conjunction of actual Possession with both these Rights; which constitutes a perfect TITLE.

3.

The TITLE to Things real may be reciprocally acquired or lost, 1. By DESCENT. 2. By PURCHASE.

4.

DESCENT is the Means whereby a Man, on the Death of his Ancestor, acquires a Title to his Estate, in right of Representation, as his HEIR at Law.

5.

To understand the Doctrine of Descents, we must form a clear Notion of CONSANGUINITY; which is the Connexion, or Relation, of Persons descended from the same Stock or common Ancestor; and it is, 1. LINEAL, where one of the Kinsmen is lineal-

D

ly

ly descended from the other. 2. COLLATERAL, where they are lineally descended, not one from the other, but both from the same common Ancestor^a.

CHAP. XI.

Of the Rules of Descent, or legal CANONS of INHERITANCE.

THE Rules of Descent, or CANONS of INHERITANCE, observed by the Laws of ENGLAND, are these^b;

I.

Inheritances shall lineally DESCEND, to the ISSUE of the Person last actually seised, *in infinitum*; but shall never lineally ASCEND.

II.

The MALE Issue shall be admitted before the FEMALE.

III.

Where there are two or more Males in equal Degree, the ELDEST only shall inherit; but the Females ALL together.

IV.

The lineal Descendants, *in infinitum*, of any Person deceased shall REPRESENT their Ancestor; that is, stand in the same Place as the Person himself would have done, had he been living.

^a See APPENDIX, No. I.

^b See APPENDIX, No. II.

V.

On Failure of LINEAL Descendants, or Issue, of the Person last seised, the Inheritance shall descend to his next COLLATERAL Kindred; that is, the Issue lineally derived from his next immediate Ancestor; subject to the three last, and to the three succeeding Rules.

VI.

Such next collateral Kindred must be of the BLOOD of the FIRST PURCHASOR. — To evidence which, the two following Rules are established.

VII.

The collateral Heir of the Person last seised must be his next Kinsman, of the WHOLE Blood.

VIII.

In collateral Inheritances, the MALE STOCKS shall be preferred to the FEMALE; that is, Kinsmen descending from the Blood of the male Ancestors shall be admitted before those from the Blood of the female: Unless where the Lands did, in fact, descend from a Female.

CHAP. XII.

Of PURCHASE *in general*; and therein of OCCUPANCY, PRESCRIPTION, and ESCHEAT.

I.

PURCHASE, or Perquisition, is the Possession of an Estate, which a Man hath by his own Act or Agreement; and not by the mere Act of Law, or Descent from any of his Ancestors. This includes, 1. OCCUPANCY. 2. PRESCRIPTION. 3. ESCHEAT. 4. FORFEITURE. 5. BANKRUPTCY. 6. ALIENATION.

2.

OCCUPANCY is Taking the Possession of those Things, which before had no Owner.

3.

PRESCRIPTION is a personal immemorial Usage of enjoying a Right, by a Man, and either his Ancestors, or those whose Estate he hath; of which the first is called prescribing in his Ancestors, the latter in a *que Estate*.

4.

ESCHEAT is where, upon Deficiency of the Tenant's INHERITABLE BLOOD, the Estate falls to the Lord of the Fee.

5.

INHERITABLE BLOOD is wanting to, 1. Monsters. 2. Bastards. 3. The maternal Relations in paternal Inheritances, and *vice versa*. 4. Kindred of the

the half Blood. 5. Aliens, and their Issue. 6. Persons attainted of Treason or Felony. 7. Papists, in respect of themselves only, by the statute Law.

C H A P. XIII.

Of FORFEITURE *and* BANKRUPTCY.

I.

FORFEITURE is a Punishment annexed by Law to some illegal Act, or Negligence, of the Owner of Things real; whereby the Estate is transferred to another, who is usually the Party injured.

2.

Forfeitures are occasioned, 1. By CRIMES. 2. By ALIENATION, contrary to Law. 3. By LAPSE. 4. By SIMONY. 5. By NONPERFORMANCE of CONDITIONS. 6. By WASTE.

3.

Forfeitures for CRIMES, or Misdemeanors, are for, 1. High Treason. 2. Misprision of Treason. 3. Petit Treason and Felony. 4. Outlawry. 5. Assaults on a Judge, and Batteries, sitting the Courts. 6. *Praemunire*. 7. Popish Recusancy, &c.

4.

ALIENATIONS, or Conveyances, which induce a Forfeiture, are 1. Those in Mortmain, made to Corporations contrary to the statute Law. 2. Those made to Aliens. 3. Those made by particular Tenants, when larger than their Estates will warrant.

5. LAPSE

5.

LAPSE is a Forfeiture of the Right of Presentation to a vacant Church, by Neglect of the Patron to present within six calendar Months.

6.

SIMONY is the corrupt Presentation of any one to an ecclesiastical Benefice, whereby that Turn becomes forfeited to the Crown.

7.

For Forfeiture by NONPERFORMANCE of CONDITIONS, see Ch. 7.

8.

WASTE is a Spoil, or Destruction, in any corporeal Hereditaments, to the Prejudice of him that hath the Inheritance.

9.

COPYHOLD Estates may have also other Causes of Forfeiture, according to the Custom of the Manor.

10.

BANKRUPTCY is the Act of becoming a BANKRUPT; that is, a Trader who secretes himself, or does certain other Acts, tending to defraud his Creditors. (See Ch. 22.)

11.

By Bankruptcy all the Estates of the Bankrupt are transferred to the Assignees of his Commissioners, to be sold for the Benefit of his Creditors.

C H A P. XIV.

Of ALIENATION *by* COMMON ASSURANCES;
and the GENERAL NATURE *of* DEEDS.

I.

A LIENATION, Conveyance, or Purchase in it's more limited Sense, is a Means of transferring real Estates, wherein they are voluntarily resigned by one Man, and accepted by another.

2.

This formerly could not be done by a Tenant, without LICENCE from his Lord; nor by a Lord, without ATTORNMENT of his Tenant.

3.

All Persons are CAPABLE of purchasing; and all, that are in Possession of any Estates, are CAPABLE of conveying them: — Unless under peculiar Disabilities by Law.

4.

Alienations are made by COMMON ASSURANCES; which are, 1. By DEED, or Matter in PAIS. 2. By Matter of RECORD. 3. By special CUSTOM. 4. By DEVISE.

5.

In Assurances by DEED may be considered, 1. It's GENERAL NATURE. 2. It's SEVERAL SPECIES.

6. A Deed,

6.

A Deed, in GENERAL, is the solemn Act of the Parties; being, usually, a Writing sealed and delivered; and it may be, 1. A Deed indented, or Indenture. 2. A Deed poll.

7.

The REQUISITES of a Deed are, 1. Sufficient PARTIES, and proper SUBJECT-MATTER. 2. A good and sufficient CONSIDERATION. 3. WRITING on Paper, or Parchment, duly stamped. 4. Legal and orderly PARTS^c, (as, 1st, the Premises; 2dly, the *Habendum*; 3dly, the *Tenendum*; 4thly, the *Reddendum*; 5thly, the Conditions; 6thly, the Warranty; 7thly, the Covenants; 8thly, the Conclusion, which includes the Date.) 5. READING it, if desired. 6. SEALING, and, in many cases, SIGNING it also. 7. DELIVERY. 8. ATTESTATION.

8.

A Deed may be AVOIDED, 1. By the Want of any of the Requisites before-mentioned. 2. By subsequent Matter; as, 1st, Rasure, or Alteration. 2dly, Defacing it's Seal. 3dly, Cancelling it. 4thly, Disagreement of those, whose Consent is necessary. 5thly, Judgment of a Court of Justice.

^c See APPENDIX, No. III. and No. IV.

C H A P. XV.

Of the SEVERAL SPECIES of DEEDS.

I.

OF Deeds, some serve to CONVEY real Property, some only to CHARGE and DISCHARGE it.

2.

Deeds which serve to CONVEY real Property, or CONVEYANCES, are either by COMMON LAW, or by STATUTE. And, of Conveyances by COMMON LAW, some are ORIGINAL or primary, others DERIVATIVE or fecondary.

3.

ORIGINAL Conveyances are, 1. FEOFFMENTS. 2. GIFTS. 3. GRANTS. 4. LEASES. 5. EXCHANGES. 6. PARTITIONS. — DERIVATIVE are, 7. RELEASES. 8. CONFIRMATIONS. 9. SURRENDERS. 10. ASSIGNMENTS. 11. REVOCATIONS.

4.

A FEOFFMENT^d is the Gift of any CORPOREAL Hereditament to another, perfected by LIVERY of SEISIN, or Delivery of bodily Possession from the Feoffor to the Feoffee; without which no freehold Estate therein can be created at common Law.

5.

A GIFT is properly the Conveyance of Lands in Tail.

^d See APPENDIX, No. III.

6.

A GRANT is the regular Method, by common Law, of conveying INCORPOREAL Hereditaments.

7.

A LEASE is the Demise, Granting, or Letting of any Tenement to Farm, usually for a less Term than the Lessor hath therein; yet sometimes possibly for a greater; according to the Regulations of the restraining and enabling Statutes.

8.

AN EXCHANGE is the mutual Conveyance of equal Interests, the one in Consideration of the other.

9.

A PARTITION is the Division of an Estate held in Jointenancy, in Coparcenary, or in common, between the respective Tenants; so that each may hold his distinct Part in Severalty.

10.

A RELEASE is the Discharge or Conveyance of a Man's Right, in Lands and Tenements, to another that hath some former Estate in Possession therein.

11.

A CONFIRMATION is the Conveyance of an Estate or Right *in esse*, whereby a voidable Estate is made sure, or a particular Estate is encreased.

12.

A SURRENDER is the Yielding up of an Estate for Life, or Years, to him that hath the immediate Remainder or Reversion; wherein the particular Estate may merge.

13. An

13.

AN ASSIGNMENT is the Transfer, or Making over to another, of the whole Right one has in any Estate; but usually in a Lease, for Life or Years.

14.

A REVOCATION is the Execution of a Power, reserved by the Grantor in a former Deed, of calling back the Estate granted. It differs from a DEFEASANCE, in that the Deed of DEFEASANCE must be of the same Antiquity as the Grant, and that the Deed of REVOCATION may be subsequent.

15.

Conveyances by STATUTE depend much on the Doctrine of USES and TRUSTS: Which are a Confidence reposed in the *Terre-Tenant*, or Tenant of the Land, that he shall permit the Profits to be enjoyed, according to the Directions of *cestuy que Use*, or *cestuy que Trust*.

16.

The Statute of Uses, having transferred all Uses into actual Possession, (or, rather, having drawn the Possession to the Use) has given Birth to three other Species of Conveyance: 1. A COVENANT to stand seised to USES. 2. A BARGAIN and SALE, enrolled. 3. A LEASE and RELEASE^c. Which owe their present Operation principally to the Statute of Uses.

^c See APPENDIX, No. IV.

17.

Deeds which do not CONVEY, but only CHARGE real Property, and DISCHARGE it, are, 1. OBLIGATIONS^f. 2. RECOGNIZANCES. 3. DEFEASANCES.

C H A P. XVI.

Of ASSURANCES by Matter of RECORD.

1.

ASSURANCES by Matter of RECORD are where the Sanction of some Court of Record is called in, to substantiate and witness the Transfer of real Property. These are, 1. PRIVATE ACTS of PARLIAMENT. 2. The KING'S GRANTS. 3. FINES. 4. Common RECOVERIES.

2.

PRIVATE ACTS of PARLIAMENT are a Species of Assurances, calculated to give (by the transcendent Authority of Parliament) such reasonable Powers or Relief, as are beyond the Reach of the ordinary Course of Law.

3.

The KING'S GRANTS, contained in Charters or Letters patent, are all entered on Record, for the Dignity of the royal Person, and Security of the royal Revenue.

^f See APPENDIX, No. V.

4. A FINE

4.

A FINE ^g (sometimes said to be a Feoffment of Record) is an amicable Composition and Agreement of an actual, or fictitious, Suit; whereby the Estate in question is acknowledged to be the Right of one of the Parties.

5.

The PARTS of a Fine are, 1. The Writ of Covenant. 2. The Licence to agree. 3. The Concord. 4. The Note. 5. The Foot. To which the Statute hath added, 6. Proclamations.

6.

Fines are of four KINDS: 1. *Sur Cognizance de Droit, come ceo que il ad de son Done.* 2. *Sur Cognizance de Droit tantum.* 3. *Sur Concessit.* 4. *Sur Done, Grant, et Render*; which is a double Fine.

7.

The FORCE and EFFECT of Fines (when levied by such as have themselves any Interest in the Estate) are to assure the Lands in question to the Cognizee, by barring the respective Rights of Parties, Privies, and Strangers.

8.

A common RECOVERY ^h is by an actual, or fictitious, Suit or Action for Land, brought against the Tenant of the Freehold; who thereupon vouches another, who undertakes to warrant the Tenant's Title: But, upon such Vouchee's making Default, the Land is RECOVERED by Judgment at Law against the Tenant; who, in return, obtains Judgment against

^g See APPENDIX, No. VI.

^h See APPENDIX, No. VII.

the Vouchee to recover Lands of equal Value in Recompense.

9.

The FORCE and EFFECT of a Recovery are to assure Lands to the Recoveror, by barring Estates tail, and all Remainders and Reversions expectant thereon; provided the Tenant in Tail either suffer, or be vouched in, such Recovery.

10.

The USES of a Fine or Recovery may be directed by, 1. Deeds to LEAD such Uses; which are made previous to the Levying or Suffering them. 2. Deeds to DECLARE the Uses; which are made subsequent.

CHAP. XVII.

Of ASSURANCES by special CUSTOM, and DEVISE.

1.

ASSURANCES by special CUSTOM are confined to the Transfer of COPYHOLD Estates.

2.

This is effected by, 1. SURRENDER by the Tenant into the Hands of the Lord to the Use of another, according to the Custom of the Manor. 2. PRESENTMENT, by the Tenants or Homage, of such Surrender. 3. ADMITTANCE of the Surrender
decree

deree by the Lord, according to the Uses expressed in such Surrender.

3.

ADMITTANCE may also be had upon original GRANTS to the Tenant from the Lord, and upon DESCENTS to the Heir from the Ancestor.

4.

DEVISE is a Disposition of Lands and Tenements, contained in the last Will and Testament of the Owner.

5.

This was not permitted by the common Law, as it stood since the Conquest; but was introduced by the statute Law.

CHAP. XVIII.

Of THINGS PERSONAL, or CHATTELS; their DISTRIBUTION; and the PROPERTY which may be had therein.

I.

THINGS PERSONAL are comprehended under the general Name of CHATTELS; which include whatever wants either the Duration, or the Immobility, attending Things real.

2.

In these are to be considered, 1. Their DISTRIBUTION. 2. The PROPERTY of them. 3. The TITLE to that Property.

3. As

3.

As to the DISTRIBUTION of Chattels, they are,
1. Chattels REAL. 2. Chattels PERSONAL.

4.

Chattels REAL are such Quantities of Interest, in Things IMMOVEABLE, as are short of the Duration of Freeholds; being limited to a Time certain, beyond which they cannot subsist. (See Ch. 7.)

5.

Chattels PERSONAL are Things MOVEABLE; which may be transferred from Place to Place, together with the Person of the Owner.

6.

PROPERTY, in Chattels personal, is either in POSSESSION, or in ACTION.

7.

Property in POSSESSION, where a Man has the actual Enjoyment of the Thing, is, 1. ABSOLUTE. 2. QUALIFIED.

8.

ABSOLUTE Property is where a Man has such an exclusive Right in the Thing, that it cannot cease to be his, without his own Act or Default.

9.

QUALIFIED Property is such as is not, in it's Nature, permanent; but may sometimes subsist, and at other times not subsist.

10.

This may arise, 1. Where the Subject is incapable of absolute Ownership. 2. From the peculiar Circumstances of the Owners.

11. Pro-

11.

Property in ACTION, is where a Man hath not the actual OCCUPATION of the Thing; but only a RIGHT to it, arising upon some Contract, and recoverable by an Action at Law.

12.

The Property of Chattels personal is liable to Remainders, if created by Will; to Jointenancy; and to Tenancy in common.

C H A P. XIX.

Of the TITLE to Things personal, or Chattels, by OCCUPANCY, PREROGATIVE, and SUCCESSION.

I.

THE TITLE to Things personal may be acquired or lost by, 1. OCCUPANCY. 2. PREROGATIVE. 3. SUCCESSION. 4. CUSTOM. 5. MARRIAGE. 6. FORFEITURE. 7. JUDGMENT. 8. GRANT. 9. CONTRACT. 10. BANKRUPTCY. 11. TESTAMENT. 12. ADMINISTRATION.

2.

OCCUPANCY still gives the first Occupant a Right to those few Things, which have no legal Owner, or which are incapable of permanent Ownership.

3.

By PREROGATIVE is vested in the Crown, or it's Grantees, the Property of the royal Revenue; (See Book I. Ch. 9, 10.) and also the Property of all

E

Game

Game in the Kingdom, with the Right of pursuing and taking it.

4.

By SUCCESSION the Right of Chattels is also vested in Corporations AGGREGATE; and likewise in such SOLE Corporations, as are the Heads and Representatives of Bodies aggregate.

C H A P. XX.

Of CUSTOM, MARRIAGE, FORFEITURE, and JUDGMENT.

I.

BY CUSTOM, obtaining in particular Places, a Right may be acquired in Chattels: The most usual of which Customs are those relating to, 1. HERIOTS. 2. MORTUARIES. 3. HEIR-LOOMS.

2.

HERIOTS are either Heriot-SERVICE, which differs little from a Rent; or Heriot-CUSTOM, which is a customary Tribute, of Goods and Chattels, payable to the Lord of the Fee on the Decease of the Owner of Lands.

3.

MORTUARIES are a customary Gift, due to the Minister in many Parishes, on the Death of his Parishioners.

4. HEIR-

4.

HEIR-LOOMS are such personal Chattels, as descend by special Custom to the Heir, along with the Inheritance of his Ancestor.

5.

By MARRIAGE the Chattels of the Wife are vested in the Husband, in the same Degree of Property, and with the same Powers, as the Wife when sole had over them; provided he reduces them to Possession.

6.

The Wife also acquires, by MARRIAGE, a Property in her *Paraphernalia*.

7.

By FORFEITURE, for Crimes and Misdemeanors, the Rights of Goods and Chattels may be transferred from one Man to another; either in part, or totally.

8.

Total Forfeitures of Goods arise from, 1. Treason, and Misprision thereof. 2. Felony. 3. Excusable Homicide. 4. Outlawry. 5. Flight. 6. Standing mute. 7. Atrocious Contempts. 8. *Praemunire*. 9. Pretended Prophecies. 10. Owling. 11. Residing abroad of Artificers. 12. Challenges to fight for Debts at Play.

9.

By JUDGMENT, consequent on a Suit at Law, a Man may, in some cases, not only RECOVER, but originally ACQUIRE, a Right to personal Property.

C H A P. XXI.

Of GRANTS and CONTRACTS.

I.

A GRANT, or GIFT, is a voluntary Conveyance of a Chattel personal in Possession, without any Consideration or Equivalent.

2.

A CONTRACT is an Agreement, upon sufficient Consideration, to do or not to do a particular Thing; And, by such Contract, any personal Property (either in Possession, or in Action) may be transferred.

3.

Contracts may be either exprefs, or implied; — either executed, or executory.

4.

The CONSIDERATION of Contracts is, 1. A good Consideration. 2. A valuable Consideration.

5.

The most usual SPECIES of personal Contracts are, 1. SALE or EXCHANGE. 2. BAILMENT. 3. HIRING or BORROWING. 4. DEBT.

6.

SALE or EXCHANGE is a Transmutation of Property from one Man to another, in Consideration of some Recompense in Value.

7.

BAILMENT is the Delivery of Goods in Trust; upon a Contract, exprefs or implied, that the Trust shall be faithfully performed by the Bailee.

8. HIRING

8.

HIRING OF BORROWING is a Contract, whereby the Possession of Chattels is transferred for a particular Time, on Condition that the identical Goods (or, sometimes, their Value) be restored at the Time appointed; together with (in case of HIRING) a Stipend or Price for the Use.

9.

This Price, being calculated to answer the Hazard, as well as Inconvenience, of Lending, gives Birth to the Doctrine of INTEREST, or USURY, upon Loans; and, consequently, to the Doctrine of INSURANCE.

10.

DEBT is any Contract, whereby MONEY becomes due to the Creditor. This is, 1. A Debt of RECORD. 2. A Debt upon SPECIAL Contract. 3. A Debt upon SIMPLE Contract; which last includes Paper Credit, or Bills of Exchange, and promissory Notes.

CHAP. XXII.

Of BANKRUPTCY.

1.

BANKRUPTCY (as defined in Ch. 13.) is the Act of becoming a Bankrupt.

2.

Herein may be considered. 1. WHO may become a Bankrupt. 2. The ACTS, whereby he may become

come a Bankrupt. 3. The PROCEEDINGS on a Commission of Bankrupt. 4. How his PROPERTY is transferred thereby.

3.

Persons, of full Age, USING the TRADE of Merchandize, by buying, and selling, and seeking their Livelyhood thereby, are liable to become Bankrupts; for Debts of a sufficient Amount.

4.

A Trader, who endeavours to avoid his Creditors, or evade their just Demands, by any of the Acts specified in the several Statutes of Bankruptcy, doth thereby commit an ACT of Bankruptcy.

5.

The PROCEEDINGS on a Commission of Bankrupt, so far as they affect the Bankrupt himself, are principally by, 1. Petition. 2. Commission. 3. Declaration of Bankruptcy. 4. Choice of Assignees. 5. The Bankrupt's Surrender. 6. His Examination. 7. His Discovery. 8. His Certificate. 9. His Allowance. 10. His Indemnity.

6.

The PROPERTY of a Bankrupt's personal Estate is, immediately upon the Act of Bankruptcy, vested by Construction of Law in the Assignees: And they, when they have collected, distribute the whole by equal Dividends among all the Creditors.

C H A P. XXIII.

Of TESTAMENT, *and* ADMINISTRATION.

I.

CONCERNING TESTAMENTS and ADMINISTRATIONS, considered jointly, are to be observed, 1. Their ORIGINAL and ANTIQUITY. 2. WHO may make a Testament. 3. It's NATURE and INCIDENTS. 4. What are EXECUTORS and ADMINISTRATORS. 5. Their OFFICE and DUTY.

2.

TESTAMENTS have subsisted in ENGLAND immemorially; whereby the Deceased was at Liberty to dispose of his personal Estate, reserving antiently to his Wife and Children their REASONABLE PART of his Effects.

3.

The Goods of INTESTATES belonged antiently to the King; who granted them to the Prelates to be disposed in pious Uses: But, on their Abuse of this Trust in the times of Popery, the Legislature compelled them to delegate their Power to ADMINISTRATORS expressly provided by Law.

4.

ALL Persons may make a Testament, unless disabled by, 1. Want of Discretion. 2. Want of Freewill. 3. Criminal Conduct.

5. TESTA-

5.

TESTAMENTS are the legal Declaration of a Man's Intentions, which he wills to be performed after his Death. These are, 1. Written. 2. Nuncupative.

6.

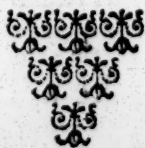
AN EXECUTOR is he, to whom a Man by his Will commits the Execution thereof.

7.

ADMINISTRATORS are, 1. *Durante minore Aetate* of an infant Executor or Administrator. 2. *Cum Testamento annexo*; when no Executor is named, or the Executor refuses to act. 3. General Administrators; in pursuance of the Statutes of EDWARD III. and HENRY VIII.

8.

The OFFICE and DUTY of Executors, (and, in many points, of Administrators also,) are, 1. To bury the Deceased. 2. To prove the Will, or take out Administration. 3. To make an Inventory. 4. To collect the Goods and Chattels. 5. To pay Debts; observing the Rules of Priority. 6. To pay Legacies, either general or specific; if they be vested, and not lapsed. 7. To distribute the undivided Surplus, according to the Statute of Distributions.



BOOK THE THIRD.

Of PRIVATE WRONGS, *or* CIVIL
INJURIES.

CHAPTER I.

Of CIVIL INJURIES; *and their* REDRESS, *by*
the mere ACT *of the* PARTIES, *or the mere*
OPERATION *of* LAW.

I.

WRONGS are the Privation of RIGHT; and are,
1. PRIVATE. 2. PUBLIC.

2.

PRIVATE WRONGS, or CIVIL INJURIES, are an
Infringement, or Privation, of the civil Rights of
Individuals, considered as Individuals.

3.

The REDRESS of civil Injuries is one principal
Object of the Laws of ENGLAND.

4.

This REDRESS is effected by, 1. The mere ACT
of the PARTIES. 2. The mere OPERATION of
LAW. 3. By BOTH together, or SUIT in COURTS.

5. RE-

5.

REDRESS, by the mere ACT of the PARTIES, is that which arises, 1. From the SOLE ACT of the Party injured. 2. From the JOINT ACT of all the Parties.

6.

Of the first Sort are, 1. Self-Defence. 2. Recaption of Goods. 3. Entry on Lands and Tenements. 4. Abatement of Nuisances. 5. Distress; for Rent, or for Damage. 6. Seizing of Heriots, &c.

7.

Of the second Sort are, 1. Accord. 2. Arbitration.

8.

REDRESS, effected by the mere OPERATION of LAW, is, 1. Where a Creditor is Executor or Administrator, and is thereupon allowed to retain his own Debt. 2. In the case of Remitter; where one, who has a GOOD Title to Lands, &c, comes into Possession by a BAD one, and is thereupon remitted to his antient good Title, which protects his ill-acquired Possession.

C H A P. II.

Of COURTS *in general; and, first, of the* PUBLIC
Courts of COMMON LAW *and* EQUITY.

I.

REDRESS, that is effected by the ACT both of
LAW and of the PARTIES, is by SUIT or AC-
TION in the COURTS of Justice.

2.

Herein may be considered, 1. The COURTS them-
selves. 2. The COGNIZANCE of Wrongs, or Inju-
ries, therein. And, of COURTS, 1. Their NATURE
and INCIDENTS. 2. Their several SPECIES.

3.

A COURT is a Place wherein Justice is judicially
administred, by Officers delegated by the Crown:
Being either a Court of Record, or not of Record.

4.

INCIDENT to all Courts are a Plaintiff, Defend-
ant, and Judge: And, with us, there are also usu-
ally Attorneys; and Advocates or Counsel, viz. ei-
ther Barristers, or Serjeants at Law.

5.

Courts of Justice, with regard to their several
SPECIES, are, 1. Of a PUBLIC, or general, Juris-
diction throughout the Realm. 2. Of a PRIVATE,
or special, Jurisdiction.

6. PUB-

6.

PUBLIC Courts of Justice are, 1. The Courts of COMMON LAW and EQUITY. 2. The ECCLESIASTICAL Courts. 3. The MILITARY Courts. 4. The MARITIME Courts.

7.

The general and public Courts of COMMON LAW and EQUITY are, 1. The Court of Piepoudre. 2. The Court-Baron. 3. The Hundred Court. 4. The County Court. 5. The Court of common Pleas. 6. The Court of King's Bench. 7. The Court of Exchequer. 8. The Court of Chancery. (Which two last are Courts of EQUITY as well as LAW.) 9. The Courts of Exchequer-Chamber. 10. The House of Peers. To which may be added, as Auxiliaries, 11, The Courts of Assize and *Nisi prius*.

C H A P. III.

*Of the Residue of PUBLIC Courts; and those also
of a PRIVATE Jurisdiction.*

I.

ECCLESIASTICAL Courts, (which were separated from the TEMPORAL by WILLIAM the Conqueror,) or Courts CHRISTIAN, are, 1. The Court of the Archdeacon. 2. The Court of the Bishop's Consistory. 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates. 7. The Court of Review.

2.

The only permanent MILITARY Court is that of Chivalry; the Courts martial, annually established by Act of Parliament, being only temporary.

3.

MARITIME Courts are, 1. The Court of Admiralty. 2. The Court of Delegates. 3. The Lords of the Privy Council, and others, authorized by the King's Commission, for Prize-Causes.

4.

Courts of a PRIVATE or special Jurisdiction are,
1. The Forest Courts; including the Courts of Attachments, Regard, Sweinmote, and Justice-Seat.
2. The Court of Commissioners of Sewers. 3. The Court of the Marshalsea and the Palace Court.
4. The Courts of the Principality of WALES.
5. The

5. The Court of the Duchy of LANCASTER. 6. The Courts of the Counties palatine, and other royal Franchises. 7. The Stannary Courts. 8. The Courts of LONDON, and other Corporations: — To which may be referred the Courts of Requests, or Courts of Conscience; and the modern Regulations of certain Courts Baron and County Courts. 9. The Courts of the two Universities.

C H A P. IV.

Of the COGNIZANCE of civil Injuries.

I.

ALL civil Injuries are COGNIZABLE either in the Courts ECCLESIASTICAL, MILITARY, MARITIME, or those of COMMON LAW.

2.

Injuries cognizable in the ECCLESIASTICAL Courts are, 1. PECUNIARY. 2. MATRIMONIAL. 3. TESTAMENTARY.

3.

PECUNIARY Injuries, here cognizable, are, 1. SUBTRACTION of TITHES. For which the Remedy is by Suit to compel their Payment, or an Equivalent; and also their double Value. 2. NON-PAYMENT of ecclesiastical DUES. Remedy: By Suit for Payment. 3. SPOLIATION. Remedy: By Suit for Restitution. 4. DILAPIDATIONS, &c. Remedy: By Suit for Damages.

4. MA-

4.

MATRIMONIAL Injuries are, 1. JACTITATION of MARRIAGE. Remedy: By Suit for perpetual Silence. 2. SUBTRACTION of CONJUGAL Rights. Remedy: By Suit for Restitution. 3. INHABILITY for the Marriage State. Remedy: By Suit for Divorce. 4. REFUSAL of decent MAINTENANCE to the Wife. Remedy: By Suit for Alimony.

5.

TESTAMENTARY Injuries are, 1. DISPUTING the Validity of WILLS. Remedy: By Suit to establish them. 2. OBSTRUCTING of ADMINISTRATIONS. Remedy: by Suit for the Granting them. 3. SUBTRACTION of LEGACIES. Remedy: By Suit for the Payment.

6.

The Course of Proceedings herein is much conformed to the civil and canon Law: But their only compulsive Process is that of Excommunication.

7.

Civil Injuries, cognizable in the Court MILITARY, or Court of Chivalry, are, 1. Injuries in point of HONOUR. Remedy: By Suit for honourable Amends. 2. ENCROACHMENTS in COAT-ARMOUR, &c. Remedy: By Suit to remove them. The Proceedings are in a summary Method.

8.

Civil Injuries, cognizable in the Courts MARITIME, are Injuries, in their Nature of common Law Cognizance, but arising wholly upon the Sea, and not within the Precincts of any County. The Proceedings

ceedings are herein also much conformed to the civil Law.

9.

All other Injuries are cognizable only in the Courts of COMMON LAW: of which in the Remainder of this Book.

10.

Two of them are however commissible by these, and other, inferior Courts; viz. 1. REFUSAL, or NEGLECT, of JUSTICE. Remedies: By Writ of *Procedendo*, or *Mandamus*. 2. ENCROACHMENT of JURISDICTION. Remedy: By Writ of Prohibition.

CHAP. V.

Of Injuries, and their Remedies, at the COMMON LAW; and, first, of Injuries to the Rights of PERSONS.

1.

IN treating of the Cognizance of Injuries by the Courts of COMMON LAW, may be considered, 1. The INJURIES themselves, and their respective REMEDIES. 2. The PURSUIT of those Remedies of the several Courts.

2.

INJURIES, cognizable by the Courts of COMMON LAW, are in general REMEDIED by putting the Party injured into Possession of that Right, whereof he is unjustly deprived.

3. This

3.

This is effected, 1. By DELIVERY of the THING detained to the rightful Owner. 2. Where that Remedy is either impossible or inadequate, by giving the Party injured a SATISFACTION in DAMAGES.

4.

The Instruments, by which these Remedies may be obtained, are SUITS or ACTIONS; which are defined to be the legal Demand of one's Right: And these are, 1. Personal. 2. Real. 3. Mixed.

5.

Injuries (whereof some are with, others without, FORCE) are, 1. Injuries to the Rights of PERSONS. 2. Injuries to the Rights of PROPERTY. And the former are, 1. Injuries to the ABSOLUTE, 2. Injuries to the RELATIVE, Rights of Persons.

6.

The ABSOLUTE Rights of Individuals are, 1. PERSONAL SECURITY. 2. PERSONAL LIBERTY. 3. PRIVATE PROPERTY. (See Book I. Ch. 4.) To which the Injuries must be correspondent.

7.

Injuries to PERSONAL SECURITY are, 1. Against a Man's LIFE. 2. Against his BODY. 3. Against his HEALTH. 4. Against his REPUTATION. — The first must be referred to the next Book.

8.

Injuries to the BODY are, 1. THREATS. 2. ASSAULT. 3 BATTERY. 4. MAYHEM. Remedy: By Action of Trespass, *vi & armis*; for Damages.

F

9. Injuries

9.

Injuries to HEALTH, by any unwholesome Practices, are remedied by a special Action of Trespass, on the Case; for Damages.

10.

Injuries to REPUTATION are, 1. Slanderous and malicious WORDS. Remedy: By Action on the Case; for Damages. 2. LIBELS. Remedy: The same. 3. Malicious PROSECUTIONS. Remedy: By Action of Conspiracy, or on the Case; for Damages.

11.

The sole Injury to PERSONAL LIBERTY is FALSE IMPRISONMENT. Remedies: 1. By Writ of *Habeas Corpus*; to remove the Wrong. 2. By Action of Trespass; to recover Damages.

12.

For Injuries to PRIVATE PROPERTY, see the next Chapter.

13.

Injuries to RELATIVE Rights affect, 1. HUSBANDS. 2. PARENTS. 3. GUARDIANS. 4. MASTERS.

14.

Injuries to an HUSBAND are, 1. ABDUCTION, or taking away his Wife. Remedy: By Action of Trespass, *de uxore rapta & abducta*; to recover Possession of his Wife, and Damages. 2. CRIMINAL CONVERSATION with her. Remedy: By Action on the Case; for Damages. 3. BEATING her. Remedy:

dy: By Action on the Case, *per quod Consortium amisit*; for Damages.

15.

The only Injury to a PARENT, or GUARDIAN, is the ABDUCTION of their Children, or Wards. Remedy: By Action of Trespas, *de Filiis, vel Custodiis, raptis vel abductis*; to recover Possession of them, and Damages.

16.

Injuries to a MASTER are, 1. RETAINING his Servants. Remedy: By Action on the Case; for Damages. 2. BEATING them. Remedy: By Action on the Case, *per quod Servitium amisit*; for Damages.

CHAP. VI.

Of Injuries to PERSONAL PROPERTY.

1.

Injuries to the Rights of PROPERTY are either to those of PERSONAL, or REAL, Property.

2.

PERSONAL Property is either in POSSESSION, or in ACTION.

3.

Injuries to personal Property in POSSESSION are, 1. By DISPOSSESSION. 2. By DAMAGE, while the Owner remains in Possession.

F 2

4. Dis-

4.

DISPOSSESSION may be effected, 1. By an unlawful TAKING. 2. By an unlawful DETAINING.

5.

For the unlawful TAKING of Goods and Chattels personal, the Remedy is, 1. Actual Restitution; which is obtained by Action of Replevin. 2. Satisfaction in Damages; by Action of Trespass, or Trover.

6.

For the unlawful DETAINING of Goods lawfully taken, the Remedy is also, 1. Actual Restitution; by Action of Replevin, or Detinue. 2. Satisfaction in Damages; by Action on the Case, for Trover, and Conversion.

7.

For DAMAGE to personal Property, while in the Owner's Possession, the Remedy is in Damages; by Action of Trespass *vi & armis*, or by Action of Trespass on the Case.

8.

Injuries to personal Property, in ACTION, arise by Breach of CONTRACTS, 1. EXPRESS. 2. IMPLIED.

9.

Breaches of EXPRESS Contracts are, 1. By NON-PAYMENT of DEBTS. Remedy: 1st, Specific Payment; recoverable by Action of Debt. 2dly, Damages for Nonpayment; recoverable by Action on the Case. 2. By NONPERFORMANCE of COVENANTS. Remedy: By Action of Covenant, 1st, to recover Damages, in Covenants personal; 2dly, to compel

compel Performance, in Covenants real. 3. By NONPERFORMANCE OF PROMISES, or ASSUMPSITS. Remedy: By Action on the Case; for Damages.

10.

IMPLIED Contracts are such as arise, 1. From the Nature and Constitution of GOVERNMENT. 2. From REASON and the Construction of Law.

11.

Breaches of Contracts, implied in the Nature of GOVERNMENT, are by the NONPAYMENT of Money which the Laws have directed to be paid. Remedy: By Action of Debt; to compel the specific Payment; or, sometimes, by Action on the Case; for Damages.

12.

Breaches of Contracts, implied in REASON and Construction of Law, are by the NONPERFORMANCE of legal presumptive ASSUMPSITS: For which the Remedy is in Damages; by an Action on the Case, on the implied ASSUMPSITS, 1. Of a *Quantum meruit*. 2. Of a *Quantum valebat*. 3. Of receiving Money to another's Use. 4. Of an *Insimul computasent*, on an Account stated; (the Remedy on an Account unstated being by Action of Account.) 5. Of performing one's Duty, in any Employment, with Integrity, Diligence, and Skill.

CHAP. VII.

*Of Injuries to REAL Property; and, first, of
DISPOSSESSION, or OUSTER, of the SUB-
JECT from his FREEHOLD.*

1.

INjuries affecting REAL Property are, 1. OUSTER.
2. TRESPASS. 3. NUSANCE. 4. WASTE.
5. SUBTRACTION. 6. DISTURBANCE.

2.

OUSTER is the Amotion of Possession; and is,
1. Of a private SUBJECT. 2. Of the KING, and
his Grantees. That of a SUBJECT is, 1. From
FREEHOLDS. 2. From CHATTELS real.

3.

Ouster from FREEHOLDS is effected by, 1. A-
BATEMENT. 2. INTRUSION. 3. DISSEISIN. 4. DIS-
CONTINUANCE. 5. DEFORCEMENT.

4.

ABATEMENT is the Entry of a Stranger, after
the Death of the Ancestor, before the Heir.

5.

INTRUSION is the Entry of a Stranger, after a
particular Estate of Freehold is determined, before
him in Remainder or Reversion.

6.

DISSEISIN is a wrongful Putting out of him that
is seised of the Freehold.

7. Dis-

7.

DISCONTINUANCE is where Tenant in Tail, or the Husband of Tenant in Fee, makes a larger Estate of the Land than the Law alloweth.

8.

DEFORCEMENT is any other Detainer of the Freehold from him who hath the Property, but who never had the Possession.

9.

The universal Remedy for all these is Delivery of Possession; and, sometimes, Damages for the Detention. This is effected, 1. By mere ENTRY. 2. By Action POSSESSORY. 3. By Writ of RIGHT.

10.

Mere ENTRY on Lands, by him who hath the apparent Right of Possession, will (if PEACEABLE) divest the mere POSSESSION of a Wrongdoer. But FORCIBLE Entries are remedied by immediate Restitution, to be given by a Justice of the Peace.

11.

Where the Wrongdoer hath not only mere Possession, but also an APPARENT Right of Possession, this may be divested by him who hath the ACTUAL Right of Possession, by means of the POSSESSORY Actions of WRIT of ENTRY, or ASSISE.

12.

A Writ of ENTRYⁱ is a real Action, which disproves the Title of the Tenant, by shewing the unlawful Means, under which he gained or continues

ⁱ See APPENDIX, No. VII. §. 1.

Possession. And it may be brought either against the Wrongdoer himself, or in the Degrees called the *Per*, the *Per* and *Cui*, and the *Post*.

13.

An ASSISE is a real Action, which proves the Title of the Demandant, by shewing his own, or his Ancestor's, Possession. And it may be brought either to remedy Abatements; viz. the Assise of *Mort d'ancestor*, &c: Or to remedy recent Disseisins; viz. the Assise of *novel Disseisin*.

14.

Where the Wrongdoer hath gained the actual Right of POSSESSION, he who hath the Right of PROPERTY can only be remedied by a Writ of RIGHT, or some Writ of a similar Nature. As,
 1. Where such Right of Possession is gained by the DISCONTINUANCE of Tenant in Tail. Remedy, for the Right of Property: By Writ of Formedon.
 2. Where gained by RECOVERY in a possessory Action, had against Tenants of particular Estates by their own Default. Remedy: By Writ of *Quod ei deforciat*.
 3. Where gained by RECOVERY in a possessory Action, had upon the Merits. —
 4. Where gained by the STATUTE of LIMITATIONS. — Remedy, in both Cases: By a mere Writ of RIGHT, the highest Writ in the Law.

C H A P. VIII.

Of the remaining Species of OUSTER.

I.

Ouster of a Subject from CHATTELS real is,
 1. From Estates by STATUTE and ELEGIT.
 2. From an Estate for YEARS.

2.

Ouster, from Estates by STATUTE or ELEGIT, is effected by a Kind of DISSEISIN. Remedy: Restitution, and Damages; by Assise of *novel Disseisin*.

3.

Ouster, from an Estate for YEARS, is effected by a like Disseisin or EJECTMENT. Remedy: Restitution, and Damages; 1. By Writ of *Ejectione Firmae*. 2. By Writ of *Quare ejecit infra Terminum*.

4.

A Writ of *Ejectione Firmae* or Action of Trespass in Ejectment, lieth where Lands, &c, are let for a Term of Years, and the Lessee is ousted or ejected from his Term; in which Case he shall recover Possession of his Term, and Damages.

5.

This is now the usual Method of trying Titles to Land, instead of an Action real: viz. By, 1. The Claimant's making an actual (or supposed) Lease upon the Land to the Plaintiff. 2. The Plaintiff's actual (or supposed) Entry thereupon. 3. His actual (or supposed) Ouster and Ejectment by the Defendant.

fendant. For which Injury this Action is brought, either against the Tenant, or (more usually) against some casual, or fictitious, Ejector; in whose Stead the Tenant may be admitted Defendant, on condition that the Lease, Entry, and Ouster be confessed, and that nothing else be disputed but the Merits of the Title, claimed by the Lessor of the Plaintiff^k

6.

A Writ of *Quare ejecit infra Terminum* is an Action of a similar Nature; only not brought against the Wrongdoer or Ejector himself, but such as are in Possession under his Title.

7.

Ouster of the KING, or his Grantees, is, 1. That of a Nature similar to the former, but differing in the Means of it's Remedy; which is, Delivery of Possession, in consequence of an Inquest of Office: Which Process extends also to Chattels personal. 2. USURPATION of Offices and Franchises. Remedy: By Writ of *Quo Warranto*; to seize them into the King's Hands: Or, by Information in nature of such Writ; to oust the Usurper. 3. REFUSAL to ADMIT, or wrongful REMOVAL of, an Officer. Remedy: 1st. By Writ of *Mandamus*, unless Cause; to admit or restore him: To which if a false Cause be returned, the Remedy is by Action on the Case; for Damages. 2dly, By peremptory *Mandamus*.

^k See APPENDIX, No. VIII.

C H A P. IX.

Of TRESPASS, NUSANCE, *and* WASTE.

I.

TRESPASS is an Entry upon, and Damage done to, another's Lands, by one's self, or one's Cattel; without any lawful Authority, or Cause of Justification: Which is called a Breach of his Close. Remedy: Damages; By Action of Trespafs, *quare Clausum fregit*: Besides that of Distrefs, Damage feasant.

2.

NUSANCE, or Annoyance, is any thing that worketh Damage, or Inconvenience: And it is either a PUBLIC and COMMON Nufance, of which in the next Book; or, a PRIVATE Nufance, which is any thing done to the Hurt or Annoyance of, 1. The corporeal, 2. The incorporeal, Hereditaments of another.

3.

The Remedies, for a private Nufance, (besides that of Abatement,) are, 1. Damages; by Action on the Case; (which also lies for special Prejudice by a public Nufance.) 2. Removal thereof, and Damages; by Affise of Nufance. 3. Like Removal, and Damages; by Writ of *Quod permittat prosternere*.

4.

WASTE is a Spoil and Destruction in Lands and Tenements, to the Injury of him who hath, 1. A
Right

Right of Common in the Lands. 2. The Remainder or Reversion of the Inheritance.

5.

The Remedies, for a Commoner, are, Restitution, and Damages; by Assise of Common: Or, Damages only; by Action on the Case.

6.

The Remedy, for him in Remainder, or Reversion, is, 1. Preventive: by Writ of Estrepement at Law, or Injunction out of Chancery; to stay Waste. 2. Corrective: By Action of Waste; to recover the Place wasted, and Damages.

CHAP. X.

Of SUBTRACTION, *and* DISTURBANCE.

I.

SUBTRACTION is when one, who owes Services to another, withdraws or neglects to perform them. This may be, 1. Of Rents, and other Services, due by TENURE. 2. Of those due by CUSTOM.

2.

For Subtraction of Rents and Services, due by TENURE, the Remedy is, 1. By Distress; to compel the Payment, or Performance. 2. By Action of Debt; to compel the Payment. 3. By Writ of *Cessavit*; — and 4. By Writ of Right *sur Disclaimer*; — to recover the Land itself.

3. For

3.

For Subtraction of Services, due by CUSTOM, the Remedy is, 1. By Writ of *Seſſa ad Molendinum, Furnum, Torrale, &c*; to compel the Performance, and recover Damages. 2. By Action on the Case; for Damages only.

4.

DISTURBANCE is the Hindering, or Disquieting, the Owners of an incorporeal Hereditament, in their regular and lawful Enjoyment of it.

5.

Disturbances are, 1. Of FRANCHISES. 2. Of COMMONS. 3. Of WAYS. 4. Of TENURE. 5. Of PATRONAGE.

6.

Disturbance, of FRANCHISES, is remedied by a special Action on the Case; for Damages.

7.

Disturbance, of COMMON, is, 1. INTERCOMMONING without Right. Remedy: Damages; by an Action on the Case, or of Trespass: Besides Distress, Damage feasant; to compel Satisfaction. 2. SURCHARGING the Common. Remedies: Distress, Damage feasant; to compel Satisfaction: Action on the Case; for Damages: Or, Writ of Admeasurement of Pasture; to apportion the Common; — and Writ *de secunda Superoneratione*; for the super-numerary Cattel, and Damages. 3. ENCLOSURE, or Obstruction. Remedies: Restitution of the Common, and Damages; by Assise of *novel Disseisin*,
and

and by Writ of *Quod permittat*: Or, Damages only ;
by Action on the Case.

8.

Disturbance, of *WAYS*, is the Obstruction, 1. Of a Way in gross, by the Owner of the Land. 2. Of a Way appendant, by a Stranger. Remedy, for both: Damages ; by Action on the Case.

9.

Disturbance, of *TENURE*, by driving away Tenants, is remedied by a special Action on the Case ; for Damages.

10.

Disturbance, of *PATRONAGE*, is the Hindrance of a Patron to present his Clerk to a Benefice ; whereof *USURPATION*, within six Months, is now become a Species.

11.

Disturbers may be, 1. The Pseudo-Patron, by his wrongful Presentation. 2. His Clerk, by demanding Institution. 3. The Ordinary, by refusing the Clerk of the true Patron.

12.

The Remedies are, 1. By Assise of *darrein Presentment* ; 2. By Writ of *Quare impedit* ; — to compel Institution and recover Damages : Consequent to which are the Writs of *Quare incumbravit*, and *Quare non admisit* ; for subsequent Damages. 3. By Writ of Right of Advowson ; to compel Institution, or establish the permanent Right.

CHAP. XI.

Of the PURSUIT of Remedies, by ACTION in the Courts of COMMON LAW; and first, of ORIGINAL, and PROCESS.

I.

THE PURSUIT of the several Remedies, furnished by the LAWS of ENGLAND, is, 1. By ACTION in the Courts of COMMON LAW. 2. By PROCEEDINGS in the Courts of EQUITY.

2.

Of an ACTION in the Court of COMMON PLEAS (the proper Court for prosecuting civil Suits) the orderly Parts are, 1. The ORIGINAL Writ. 2. The PROCESS. 3. The PLEADINGS. 4. The DEMURRER, or ISSUE. 5. The TRIAL. 6. The JUDGMENT. 7. The APPEAL. 8. The EXECUTION.

3.

The ORIGINAL Writ is the Beginning or Foundation of a Suit, and is either a *Praecipe*¹, where something in certain is demanded; or a *Si fecerit te securum*^m, where nothing is demanded in certain, but only a Satisfaction in general: Both issuing out of Chancery under the King's great Seal, and returnable in Bank during Term-time.

¹ See APPENDIX, No. IX. §. 1. ^m See APPENDIX, No. VIII. §. 1.

4.

PROCESSⁿ is the Means of compelling the Defendant to appear in Court; and it includes, 1. Summons, and the subsequent judicial Writs of Attachment (which is sometimes the first or original Process) and *Distringas*, or Distress infinite. 2. The Writs of *Capias ad respondendum*, and *Testatum Capias*; which are mesne Processes: (Or, instead of these, in the King's Bench, the Bill of *Middlesex*, and Writ of *Latitat*: — and, in the Exchequer, the Writ of *Quo minus*.) 3. The *alias* and *pluries* Writs. 4. The Exigent, or Writ of *Exigi facias*, Proclamations, and Outlawry. 5. Appearance, and common Bail. 6. The Arrest. 7. Special Bail, first to the Sheriff, and then to the Action.

C H A P. XII.

Of PLEADINGS, DEMURRER, and ISSUE.

I.

PLEADINGS^o are the mutual Altercations of the Plaintiff and Defendant in Writing; under which are comprized, 1. The Declaration or Count; (wherein, incidentally, of the *Visne*, *Nonsuit*, *Retraxit*, and *Discontinuance*.) 2. The Defence, *Imparlance*, *View*, *Oyer*, *Aid*, *Voucher*, or *Age*. 3. The Plea; which is either a DILATORY Plea, (1st, to the Jurisdiction; 2dly, in Disability of the

ⁿ See APPENDIX, No. IX. §. 2, 3, 4, 5.
No. VIII. §. 4. No. IX. §. 6.

^o See APPENDIX,

Plaintiff;

Plaintiff; 3dly, in Abatement:) Or it is a Plea TO THE ACTION; sometimes confessing the Action, either in whole, or in part; (wherein of a Tender, and Set-off;) but usually denying the Complaint, by pleading, 1st, a special Bar; (wherein of Justifications, the Statutes of Limitation, &c;) and 2dly, the general Issue. 4. Replication, Rejoinder, Surrejoinder, Rebutter, Surrebutter, &c. Therein of Estoppels, Duplicitie, Departure, Protestation, and other Incidents of Pleading.

2.

ISSUE is where the Parties, in a Course of Pleading, come to a Point affirmed on one Side and denied on the other: Which, if it be a Matter of Law, is called a DEMURRER^p; if it be a Matter of Fact, still retains the Name of an Issue^q, of Fact.

3.

CONTINUANCE^r is the Detaining of the Parties in Court from Time to Time, by giving them a Day certain to appear upon. And, if any new Matter arises since the last Continuance or Adjournment, the Defendant may take Advantage of it, even after Demurrer or Issue, by alleging it in a Plea *puis darrein Continuance*.

^p See APPENDIX, No. IX. §. 6.

^q See APPENDIX, No. VIII. §. 4.

^r See APPENDIX, No. VIII. §. 4. No. IX. §. 6.

CHAP. XIII.

Of the several Species of TRIAL.

1.

TRIAL is the Examination of the Point put in Issue.

2.

The Trial of an Issue of LAW, or Demurrer, is by the Opinion of the Judges of the Court.

3.

The Trial of an Issue of FACT is, 1. By the RECORD. 2. By INSPECTION. 3. By WITNESSES. 4. By CERTIFICATE. 5. By WAGER of BATTEL. 6. By WAGER of LAW. 7. By JURY.

4.

Trial by the RECORD is had, when the Existence of such Record is the Point in Issue.

5.

Trial by INSPECTION is had by the Court, principally when the Matter in Issue is the evident Object of the Senses.

6.

Trial by WITNESSES (the regular Method in the civil Law) is only used on a Writ of Dower, when the Death of the Husband is in Issue.

7.

Trial by CERTIFICATE is had in those Cases, where such Certificate must have been conclusive to a Jury.

8. Trial

8.

Trial by WAGER of BATTEL, in civil Cases, is only had on a Writ of Right: But, in lieu thereof, the Tenant may have, at his Option, the Trial by the GRAND ASSISE.

9.

Trial by WAGER of LAW is only had, where the Matter in Issue may be supposed to have been privately transacted, between the Parties themselves, without the Intervention of other Witnesses.

C H A P. XIV.

Of the Trial by JURY.

1.

TRial by JURY is, 1. EXTRAORDINARY; as, by the grand Assise, in Writs of Right; and by the grand Jury, in Writs of Attaint. 2. ORDINARY.

2.

The Method and Process of the ORDINARY Trial by Jury^s is, 1. The Writ of *Venire facias* to the Sheriff, Coroners, or Elisors; with the subsequent compulsive Process of *Habeas Corpora*, or *Distringas*. 2. The Carrying down of the Record to the Court of *Nisi prius*. 3. The Sheriff's Return; or Panel of, 1st, special, 2dly, common Jurors. 4. The Challenges; 1st, to the Array; 2dly, to the Polls of

^s See APPENDIX, No. VIII. §. 4.

the Jurors; either, *propter Honoris Respectum*, *propter Defectum*, *propter Affectum* (which is sometimes a principal Challenge, sometimes to the Favour,) or, *propter Delictum*. 5. The *Tales de circumstantibus*. 6. The Oath of the Jury. 7. The Evidence; which is either by Proofs, 1st, written; 2dly, parol: — or, by the private Knowledge of the Jurors. 8. The Verdict; which may be, 1st, privy; 2dly, public; 3dly, special.

CHAP. XV.

Of JUDGMENT, APPEAL, and EXECUTION.

I.

Whatever is transacted at the Trial, in the Court of *Nisi prius*, is added to the Record under the Name of a *POSTEA*: Consequent upon which is the JUDGMENT.

2.

JUDGMENT is the Sentence of Law, pronounced by the Court, upon the Matter contained in the Record.

3.

Judgment may be ARRESTED^t or stayed for Causes, 1. Extrinsic, or *dehors* the Record. 2. Intrinsic, or within it.

^t See APPENDIX, No. VIII. §. 4.

4.

Judgments are, 1. Interlocutory. 2. Final; which are either complete at first, or incomplete till perfected by a Writ of Enquiry.

5.

COSTS, or Expences of Suit, are now the necessary Consequence of obtaining Judgment.

6.

Proceedings, in the Nature of APPEALS from Judgment, are, 1. A Writ of ATTAINT; to impeach the Verdict of a Jury; which of late has been superseded by new Trials. 2. A Writ of *Audita Querela*; to discharge a Judgment by Matter that has since happened. 3. A Writ of ERROR^u, from one Court of Record to another; to correct Judgments, erroneous in point of Law, and not helped by the Statutes of Amendment and Jeofails.

7.

EXECUTION is the Putting in Force of the Sentence or Judgment of the Law: Which is effected, 1. Where Possession of the Thing itself is recovered; by Writ of *Habere facias Seisinam, Possessionem, &c.* 2. Where Money only is recovered; by Writ of, 1st, *Capias ad Satisfaciendum*^w, against the Body of the Defendant; or, in default thereof, *Scire facias* against his Bail. 2dly, *Fieri facias*^x, against his Goods and Chattels. 3dly, *Levari facias*, against his Goods, and the PROFITS of his LANDS. 4thly, *Elegit*, against his Goods, and the POSSESSION of

^u See APPENDIX, No. IX. §. 6.

^{w x} See APPENDIX, No. IX. §. 7.

his

his LANDS. 5thly, *Extendi facias*, and other Proceſs, on Statutes, Recognizances, &c, againſt his BODY, LANDS, and GOODS.

CHAP. XVI.

Of Proceedings in the Courts of EQUITY.

I.

EQUITY, being the Correction of that wherein the Law (by reaſon of it's Univerſality) is deficient, ſhould not therefore interfere where Relief may be had by the ordinary Courſe of Law.

2.

Aequitas ſequitur Legem; and therefore Equity ſhould never weaken the fundamental Rules of Property, eſtabliſhed by the common Law.

3.

Suits in Equity, from the Variety of Circumſtances therein conſidered, muſt neceſſarily be of longer Duration than Suits at the common Law.

4.

The Buſineſs of Equity is almoſt infinite; but is chiefly to give Relief in Matters of FRAUD, ACCIDENT, and TRUST; *ſecundum Conſcientiam, & Arbitrium boni Viri*.

5.

The Proceedings in the Court of Chancery, (to which thoſe in the Exchequer very nearly conform,) are,

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are, 1. Bill. 2. Writ of *Subpoena*; and perhaps, Injunction. 3. Process of Contempt; viz. (ordinarily) Attachment, Attachment with Proclamations, Commission of Rebellion, Serjeant at Arms, and Sequestration. 4. Appearance. 5. Demurrer. 6. Plea. 7. Answer. 8. Exceptions; Amendments; cross, or supplemental, Bills; Bills of Revivor, Interpleader, &c. 9. Replication. 10. Issue. 11. Depositions, taken upon Interrogatories; and subsequent Publication thereof. 12. Hearing. 13. Interlocutory Decree; feigned Issue, and Trial; Reference to the Master, and Report; &c. 14. Final Decree. 15. Rehearing, or Bill of Review. 16. Appeal to Parliament.



BOOK THE FOURTH.

Of PUBLIC WRONGS, *or* CRIMES *and*
MISDEMESNORS.

CHAPTER I.

Of the NATURE *of* CRIMES, *and* PUNISHMENTS.

I.

IN treating of PUBLIC WRONGS may be considered, 1. The general NATURE of Crimes, and Punishment. 2. The Persons CAPABLE of committing Crimes, and their several DEGREES of Guilt. 3. The several SPECIES of Crimes, and their respective Punishments. 4. The Means of PREVENTION. 5. The Method of PUNISHMENT.

2.

A CRIME, or MISDEMESNOR, is an ACT committed, or omitted, in Violation of a public Law, either forbidding or commanding it.

3.

Crimes are distinguished from civil Injuries, in that they are a Breach and Violation of the PUBLIC Rights, due to the whole Community, considered as a Community.

4. PUNISH-

4.

PUNISHMENTS may be considered with regard to,
1. The POWER; 2. The END; 3. The MEASURE;
—of their Infliction.

5.

The POWER, or Right, of inflicting human Punishments, for NATURAL Crimes, or such as are *Mala in se*, was by the Law of Nature vested in every Individual; but, by the fundamental Contract of Society, is now transferred to the sovereign Power: In which also is vested, by the same Contract, the Right of punishing POSITIVE Offences, or such as are *Mala prohibita*.

6.

The END of human Punishments is to prevent future Offences; 1. By amending the Offender himself. 2. By deterring others through his Example. 3. By depriving him of the Power to do future Mischief.

7.

The MEASURE of human Punishments must be determined by the Wisdom of the sovereign Power, and not by any uniform universal Rule: Though that Wisdom may be regulated, and assisted, by certain general, equitable, Principles.

C H A P. II.

*Of the Persons CAPABLE of committing Crimes,
and their several DEGREES of Guilt.*

1.

ALL Persons are CAPABLE of committing Crimes, unless there be in them a DEFECT of WILL: For, to constitute a legal Crime, there must be both a vitious Will, and a vitious Act.

2.

The Will does not concur with the Act, 1. Where there is a Defect of UNDERSTANDING. 2. Where no Will is EXERTED. 3. Where the Act is CON-
STRAINED by Force and Violence.

3.

A vitious Will may therefore be wanting, in the Cases of, 1. Infancy. 2. Ideocy, or Lunacy. 3. Drunkenness; which doth not, however, excuse. 4. Misfortune, or Chancemedley. 5. Ignorance, or Mistake of Fact. 6. Compulsion, or Necessity: which is, 1st, that of civil Subjection; 2dly, that of Duress *per Minas*; 3dly, that of choosing the least pernicious of two Evils, where one is unavoidable; 4thly, that of Want, or Hunger; which is no legitimate Excuse.

4.

The King, from his Excellence and Dignity, is also incapable of doing Wrong.

5. The

5.

The different DEGREES of Guilt in Criminals are, 1. AS PRINCIPALS. 2. AS ACCESSORIES.

6.

A PRINCIPAL in a Crime is, 1. He who commits the Fact. 2. He who is present at, aiding, and abetting, the Commission.

7.

An ACCESSORY is he who doth not commit the Fact, nor is present at the Commission; but is in some sort concerned therein, either BEFORE OR AFTER.

8.

Accessories can only be in petit Treason, and Felony: In high Treason, and Misdemeanors, all are Principals.

9.

An Accessory, BEFORE the Fact, is one who, being absent when the Crime is committed, hath procured, counselled, or commanded another to commit it.

10.

An Accessory, AFTER the Fact, is where a Person, knowing a Felony to have been committed, receives, relieves, comforts, or assists the Felon. Such Accessory is usually entitled to the Benefit of Clergy; where the Principal, and Accessory BEFORE the Fact, are excluded from it.

C H A P. III.

Of Offences against the DIVINE Law, and the Law of NATIONS.

I.

CRimes and Misdemeanors, cognizable by the Laws of ENGLAND, are such as more immediately offend, 1. The DIVINE Law. 2. The Law of NATIONS. 3. The MUNICIPAL LAW.

2.

Crimes, more immediately offending the DIVINE Law, are, 1. APOSTACY. For which the Penalty is Incapacity, and Imprisonment. 2. HERESY. Penalty, for one Species thereof: The same. 3. Offences against the established CHURCH: — Either, by REVILING it's Ordinances. Penalties: Fine; Deprivation; Imprisonment; Forfeiture. — Or, by NONCONFORMITY to it's Worship: 1st, Through total IRRELIGION. Penalty: Fine. 2dly, Through protestant DISSENTING. Penalty: Suspended by the Toleration Act. 3dly, Through POPERY, either in Professors of the popish Religion, popish Recusants convict, or popish Priests. Penalties: Incapacity; double Taxes; Imprisonment; Fines; Forfeitures; Abjuration of the Realm; Judgment of Felony, without Clergy; and Judgment of high Treason. 4. BLASPHEMY. Penalty: Fine, Imprisonment, and corporal Punishment. 5. Profane SWEARING

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SWEARING and CURSING. Penalty: Fine, or House of Correction. 6. WITCHCRAFT; or, at least, the Pretence thereto. Penalty: Imprisonment, and Pillory. 7. Religious IMPOSTURES. Penalty, Fine, Imprisonment, and corporal Punishment. 8. SABBATH-BREAKING. Penalty: Fine. 9. DRUNKENNESS. Penalty: Fine, or Stocks. 10. LEWDNESS. Penalties: Fine; Imprisonment; House of Correction.

3.

Crimes against the Law of NATIONS, animadverted on by the LAWS of ENGLAND, are, 1. Violation of SAFE-CONDUCTS. 2. Infringement of the Rights of EMBASSADORS. Penalty, in both: Arbitrary. 3. PIRACY. Penalty: Judgment of Felony, without Clergy.

C H A P. IV.

Of Offences more especially against the KING, and his Government; and, first, of HIGH TREASON.

1.

CRimes, and Misdemeanors, more peculiarly offending the MUNICIPAL Law, are those which especially affect, 1. The KING, and his Government. 2. The COMMONWEALTH. 3. INDIVIDUALS.

2.

Offences, especially affecting the KING, and his Government, are, 1. HIGH TREASON. 2. FELONIES injurious to the Prerogative. 3. PRAEMUNIRE. 4. Other MISPRISIONS and CONTEMPTS.

3.

HIGH TREASON, according to the Statute of EDWARD III, may be committed, 1. By COMPASSING or IMAGINING the DEATH of the King, or Queen-confort, or their eldest Son and Heir; demonstrated by some overt Act. 2. By VIOLATING the King's Companion, his eldest Daughter, or the Wife of his eldest Son. 3. By some overt Act of LEVYING WAR against the King in his Realm. 4. By ADHERENCE to the King's Enemies. 5. By COUNTERFEITING the King's great or privy SEAL. 6. By COUNTERFEITING the King's MONEY, or Importing counterfeit Money. 7. By KILLING the Chancellor, Treasurer, or King's Justices, in the Execution of their Offices.

4. HIGH

4.

HIGH TREASONS, created by subsequent Statutes, are such as relate, 1. To PAPISTS: As, the repeated Defence of the Pope's Jurisdiction; the Coming from beyond Sea of a natural-born popish Priest; the Renouncing of Allegiance, and Reconciliation to the Pope, or other foreign Power. 2. To the COINAGE, or other Signatures of the King: As, Counterfeiting (or, Importing and Uttering counterfeit) foreign Coin, here current; Forging the Sign manual, privy Signet, or privy Seal; Falsifying, &c, the current Coin. 3. To the PROTESTANT SUCCESSION: As, Corresponding with, or Remitting Money to, the Pretender or his Sons; Endeavouring to impede the Succession; Writing or Printing, in Defence of the Pretender's Title, or in Derogation of the Act of Settlement, or of the Power of Parliament to limit the Descent of the Crown.

5.

The PUNISHMENT of high Treason, in MALES, is (generally) to be, 1. Drawn. 2. Hanged. 3. Embowelled alive. 4. Beheaded. 5. Quartered. 6. The Head and Quarters to be at the King's Disposal. But, in Treasons relating to the Coin, only to be drawn, and hanged till dead. FEMALES, in both cases, are to be drawn, and burned alive.

CHAP. IV.

Of Offences more especially against the KING, and his Government; and, first, of HIGH TREASON.

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C H A P. V.

Of other Crimes, affecting the KING and Government.

I.

FELONY is that Offence, which occasions the total Forfeiture of Lands or Goods at common Law; now usually also punishable with Death, by Hanging; unless through the Benefit of Clergy.

2.

FELONIES, injurious to the King's Prerogative (of which some are within, others without, Clergy) are,
 1. Such as relate to the COIN: As, the wilful Uttering of counterfeit Money, &c; (to which Head some inferior Misdemeanors affecting the Coinage may be also referred.) 2. Conspiring or Attempting to kill a PRIVY COUNSELLOR. 3. Serving FOREIGN States, or Enlisting Soldiers for FOREIGN Service. 4. Embezzling the King's ARMOUR or STORES. 5. DESERTION from the King's ARMIES, by Land or Sea.

3.

PRAEMUNIRE, in it's original Sense, is the Offence of Adhering to the temporal Power of the Pope, in Derogation of the regal Authority. Penalty: Outlawry, Forfeiture, and Imprisonment: Which hath since been extended to some Offences of a different Nature.

4. Other

4.

Other MISPRISIONS and CONTEMPTS are, 1. NEGATIVE; viz. 1st, Misprision of TREASON. Penalty: Forfeiture and Imprisonment. 2dly, Misprision of FELONY. Penalty: Fine and Imprisonment. 3dly, Concealment of TREASURE TROVE. Penalty: Fine and Imprisonment. 2. POSITIVE; viz. 1st, MAL-ADMINISTRATION of public Trusts. Usual Penalties: Banishment; Fines; Imprisonment; Disability. 2dly, Contempts against the King's PREROGATIVE. Penalty: Fine, and Imprisonment. 3dly, Contempts against his PERSON, and GOVERNMENT. Penalty: Fine, Imprisonment, and infamous corporal Punishment. 4thly, Contempts against his TITLE. Penalties: Fine, and Imprisonment; or, Fine, and Disability. 5thly, Contempts against his PALACES, or COURTS of Justice. Penalties: Fine; Imprisonment; corporal Punishment; Loss of right Hand; Forfeiture.

CHAP. VI.

*Of Offences against the COMMONWEALTH;
and, first, against the public JUSTICE, and
the public PEACE.*

I.

CRimes, especially affecting the COMMONWEALTH, are Offences, 1. Against the public JUSTICE. 2. Against the public PEACE. 3. Against the public TRADE. 4. Against the public HEALTH. 5. Against the public OECONOMY.

2.

Offences, against the public JUSTICE, are, 1. VACATING Records, and PERSONATING others in Courts of Justice. Penalty: Judgment of Felony, usually without Clergy. 2. COMPELLING Prisoners to become APPROVERS. Penalty: Judgment of Felony. 3. OBSTRUCTING the Execution of Procefs. 4. ESCAPES. 5. BREACH of Prison. 6. RESCUE. — Which four may be either Felonies, or Misdemeanors punishable by Fine and Imprisonment. 7. RETURNING from TRANSPORTATION. This is Felony, without Clergy. 8. Taking REWARDS, to HELP one to his stolen Goods. Penalty: The same as for the Theft. 9. RECEIVING stolen Goods. Penalties: Transportation; Fine; and Imprisonment. 10. THEFTBOTE. 11. BARRETRY, and Suing in a feigned Name. 12. MAINTENANCE. 13. CHAMPERTY. — Penalty, in these four: Fine, and Imprisonment. 14. COMPOUNDING Prosecutions on
penal

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penal Statutes. Penalty: Fine, Pillory, and Disability. 15. CONSPIRACY; and Threats of Accusation in order to extort Money, &c. Penalties: The villenous Judgment; Fine; Imprisonment; Pillory; Whipping; Transportation. 16. PERJURY, and Subornation thereof. Penalties: Infamy; Imprisonment; Fine, or Pillory; and, sometimes, Transportation or House of Correction. 17. BRIBERY. Penalty: Fine, and Imprisonment. 18. EMBRACERY. Penalty: Infamy, Fine, and Imprisonment. 19. FALSE VERDICT. Penalty: The Judgment in Attaint. 20. NEGLIGENCE of public Officers, &c. Penalty: Fine and Forfeiture of the Office. 21. OPPRESSION by Magistrates. 22. EXTORTION of Officers. — Penalty, in both: Imprisonment, Fine, and, sometimes, Forfeiture of the Office.

3.

Offences, against the public PEACE, are, 1. RIOTOUS ASSEMBLIES to the Number of TWELVE. 2. Appearing armed, or Hunting, in DISGUISE. 3. THREATENING by Letters. — All these are Felonies, without Clergy. 4. Destroying of TURNPIKES, &c. Penalties: Whipping; Imprisonment; Judgment of Felony, with and without Clergy. 5. AFFRAYS. 6. RIOTS, ROUTS, and UNLAWFUL ASSEMBLIES. 7. Tumultuous PETITIONING. 8. Forcible ENTRY and DETAINER. — Penalty, in all four: Fine, and Imprisonment. 9. Going unusually ARMED. Penalty: Forfeiture of Arms, and Imprisonment. 10. Spreading FALSE NEWS. Penalty: Fine, and Imprisonment. 11. Pretended PROPHECIES. Penalties:

nalties: Fine; Imprisonment; and Forfeiture.

12. CHALLENGES. Penalty: Fine, Imprisonment, and, sometimes, Forfeiture. 13. LIBELS. Penalty: Fine, and corporal Punishment.

CHAP. VII.

Of the remaining Offences against the COMMON-WEALTH.

I.

OFFENCES, against the public TRADE, are,
 1. OWLING. Penalties: Fines; Forfeiture; Imprisonment; Loss of left Hand; Transportation; Judgment of Felony. 2. SMUGGLING. Penalties: Fines; Loss of Goods; Judgment of Felony, without Clergy. 3. FRAUDULENT BANKRUPTCY. Penalty: Judgment of Felony, without Clergy. 4. USURY. Penalty: Fine, and Imprisonment. 5. CHEATING. Penalties; Fine; Imprisonment; Pillory; Tumbrel; Whipping, or other corporal Punishment; Transportation. 6. FORESTALLING. 7. REGRATING. 8. ENGROSSING. — Penalties, for all three: Loss of Goods; Fine; Imprisonment; Pillory. 9. MONOPOLIES, and COMBINATIONS to raise the Price of Commodities. Penalties: Fines; Imprisonment; Pillory; Loss of Ear; Infamy; and, sometimes, the Pains of *Praemunire*. 13. Exercising a TRADE, not having served as Apprentice. Penalty; Fine. 11. Transporting, or Residing abroad, of ARTIFICERS. Penalties: Fine; Imprisonment; Forfeiture; Incapacity; Becoming Aliens.

2. Of-

2.

Offences, against the public HEALTH, are, 1. IRREGULARITY, in time of the PLAGUE, or of QUARENTINE. Penalties: Whipping; Judgment of Felony, with and without Clergy. 2. Selling UNWHOLESOME PROVISIONS. Penalties: Amercement; Pillory; Fine; Imprisonment; Abjuration.

3.

Offences against the public OECONOMY, or domestic Order of the Kingdom, are, 1. Those relating to CLANDESTINE and IRREGULAR MARRIAGES. Penalties: Judgment of Felony, with and without Clergy. 2. BIGAMY, or (more properly) POLYGAMY. Penalty: Judgment of Felony. 3. WANDERING, by SOLDIERS or MARINERS. 4. REMAINING in ENGLAND, by EGYPTIANS. Both these are Felonies, without Clergy. 5. IDLENESS, DISORDER, VAGRANCY, and INCORRIGIBLE ROGUERY. Penalties: Imprisonment; Whipping; Judgment of Felony. 6. COMMON NUSANCES, 1st, in Highways, &c; 2dly, by offensive Trades; 3dly, by disorderly Houses; 4thly, by Cottages; 5thly, by Fireworks; 6thly, by Evesdropping; — Penalty, in all: Fine. — 7thly, by common Scolding. Penalty: The cucking Stool. 7. LUXURY, in Diet. Penalty: Uncertain. 8. GAMING. Penalties: To Gentlemen, Fines; to others, Fine and Imprisonment; to cheating Gamesters, Fine, Infamy, and the corporal Pains of Perjury. 9. DESTROYING the GAME. Penalties: Fines; and corporal Punishment.

C H A P. VIII.

Of Crimes against INDIVIDUALS; *and, first,*
of HOMICIDE.

I.

CRimes, especially affecting INDIVIDUALS, are,
1. Against their PERSONAL SECURITY. 2. Against their PERSONAL LIBERTY. 3. Against their HABITATIONS. 4. Against their PROPERTY.

2.

Crimes against the PERSONAL SECURITY of Individuals, are, 1. By HOMICIDE, or Destroying Life. 2. By other CORPORAL Injuries.

3.

HOMICIDE is, 1. JUSTIFIABLE. 2. EXCUSABLE. 3. CRIMINAL.

4.

Homicide is JUSTIFIABLE, 1. By Necessity, and Command of Law. 2. By Permission of Law; 1st, for the Furtherance of public Justice; 2dly, for Prevention of some forcible Felony.

5.

Homicide is EXCUSABLE, 1. *Per Infortunium*, or by Chancemedley. 2. *Se defendendo*, or in Self-Defence. Penalty, in both: Forfeiture of Goods, which however is pardoned of course.

6.

CRIMINAL Homicide is the Killing of a human Creature without Justification or Excuse. This is, 1. Killing ONE'S SELF. 2. Killing ANOTHER.

7. Killing

7.

Killing ONE'S SELF, or SELF-MURDER, is where one deliberately, or by any unlawful malicious Act, puts an End to his own Life. This is Felony; punished by ignominious Burial, and Forfeiture of Goods and Chattels.

8.

Killing ANOTHER is, 1. MANSLAUGHTER.
2. MURDER.

9.

MANSLAUGHTER is the unlawful Killing of another; without Malice, exprefs or implied. This is Felony, but within Clergy; except in the Case of STABBING.

10.

MURDER is when a Person, of sound Memory and Discretion, unlawfully killeth any reasonable Creature, in Being, and under the King's Peace; with Malice aforethought, either exprefs or implied. This is Felony, without Clergy; punished with speedy Death, and Hanging in Chains, or Dissection.

11.

PETIT TREASON (being an aggravated Degree of MURDER) is where the Servant kills his Master, the Wife her Husband, or the Ecclesiastic his Superior. Penalty: In Men, to be drawn, and hanged; in Women, to be drawn, and burned.

C H A P. IX.

Of other Crimes, affecting the PERSONAL SECURITY and PERSONAL LIBERTY of Individuals.

I.

CRimes affecting the PERSONAL SECURITY of Individuals, not amounting to Homicide, are, 1. MAYHEM; and also SHOOTING at another. Penalties: Fine; Imprisonment; Judgment of Felony, without Clergy. 2. Forcible ABDUCTION, and MARRIAGE or DEFILEMENT, of an Heiress: which is Felony: Also, STEALING, and DEFLOWERING or MARRYING, any Woman-Child under the Age of SIXTEEN Years; for which the Penalty is Imprisonment, Fine, and temporary Forfeiture of her Lands. 3. RAPE; and also CARNAL KNOWLEDGE of a Woman-Child under the Age of TEN Years. 4. BUGGERY, with Man or Beast.—Both these are Felonies, without Clergy. 5. ASSAULT. 6. BATTERY; especially of Clergymen. 7. WOUNDING. Penalties, in all three. Fine; Imprisonment; and other corporal Punishment.

2.

Crimes, affecting the PERSONAL LIBERTY of Individuals, are, 1. FALSE IMPRISONMENT. 2. KIDNAPPING, or, forcibly Stealing away the King's Subjects. Penalties, in both: Fine; Imprisonment; and other corporal Punishment.

C H A P.

C H A P. X.

*Of Crimes affecting the HABITATION, and
PROPERTY, of Individuals.*

1.

Crimes, affecting the HABITATION of Individuals, are, 1. ARSON. 2. BURGLARY.

2.

ARSON is the malicious and wilful Burning of the House, Outhouses, &c, of another Man. This is Felony; in some cases within, in others without, Clergy.

3.

BURGLARY is the Breaking and Entering, by Night, into a Mansion-House; with Intent to commit a Felony. This is Felony, without Clergy.

4.

Crimes, affecting the PROPERTY of Individuals, are, 1. LARCINY. 2. Malicious MISCHIEF. 3. FORGERY.

5.

LARCINY is, 1. SIMPLE. 2. MIXED, or COM-
POUND.

6.

SIMPLE Larciny is the felonious Taking, and Carrying away, of the personal Goods of another. And it is, 1. GRAND Larciny; being above the Value of twelve Pence. Which is Felony; in some cases within, in others without, Clergy. 2. PETIT
Lar-

Larciny; to the Value of twelve Pence only. Which is also Felony, but not capital; being punished with Whipping, or Transportation.

7.

MIXED, or COMPOUND, Larciny is that wherein the Taking is accompanied with the Aggravation of being, 1. From the HOUSE. 2. From the PERSON.

8.

Larcinies from the HOUSE, by Day or Night, are Felonies without Clergy, when they are, 1. Larcinies, above twelve Pence, from a Church; or from a Dwelling-House, or Booth, any Person being therein. 2. Larcinies, of five Shillings, by Breaking the House; though no Person be therein. 3. Larcinies, of forty Shillings, from the House; without Breaking, and though no Person be therein. 4. Larcinies, of five Shillings, from a Shop, &c; whether broken or not, and though no Person be therein.

9.

Larciny from the PERSON is, 1. By PRIVATELY STEALING, from the Person of another, above the Value of twelve Pence. 2. By ROBBERY; or the felonious and forcible Taking, from the Person of another, in or near the Highway, Goods or Money of any Value, by Putting him in Fear. These are, both, Felonies without Clergy. An Attempt to rob is also Felony.

10.

Malicious MISCHIEF, by Destroying Dikes, Goods, Cattel, Ships, Garments, Fishponds, Trees,
Sea

Sea or River Banks, Hopbinds, or Coalmines, is Felony; and, in most cases, without Clergy.

II.

FORGERY is the fraudulent Making or Alteration of a Writing, in prejudice of another's Right. Penalties: Fine; Imprisonment; Loss of Nose and Ears; Forfeiture; Judgment of Felony, without Clergy.

C H A P. XI.

Of the Means of PREVENTION, and the COURTS instituted for the PUNISHMENT, of Crimes and Misdemeanors.

I.

CRimes and Misdemeanors may be PREVENTED, by Compelling suspected Persons to give SECURITY: Which is effected by binding them in a conditional Recognizance to the King, taken in Court, or by a Magistrate.

2.

These Recognizances may be conditioned, 1. To keep the PEACE. 2. To be of the GOOD BEHAVIOUR.

3.

In the Method of PUNISHMENT may be considered, 1. The several COURTS of criminal Jurisdiction. 2. The several PROCEEDINGS therein.

4. The

4.

The criminal COURTS are, 1. Those of a PUBLIC and general Jurisdiction throughout the Realm. 2. Those of a PRIVATE and special Jurisdiction.

5.

PUBLIC Courts are, 1. The high Court of Parliament; which proceeds by Impeachment. 2. The Court of the Lord high Steward. 3. The Court of King's Bench. 4. The Court of Chivalry. 5. The Court of Admiralty, under the King's Commission. 6. The Courts of Oyer and Terminer, and general Goal-delivery. 7. The Court of Quarter-Sessions. 8. The Sheriff's Tourn. 9. The Court Leet. 10. The Court of the Coroner. 11. The Court of the Clerk of the Market.

6.

PRIVATE Courts are, 1. The Court of the Lord Steward, &c. by Statute of HENRY VII. 2. The Court of the Lord Steward, &c. by the Statute of HENRY VIII. 3. The University Courts.

C H A P. XII.

*Of SUMMARY Convictions, and the first Stages
of REGULAR Prosecutions.*

I.

PROCEEDINGS in criminal Courts are, 1. SUMMARY. 2. REGULAR.

2.

SUMMARY Proceedings are such, whereby a Man may be convicted of divers Offences, without any formal Process or Jury, at the Discretion of the Judge or Judges appointed by Act of Parliament.

3.

REGULAR Proceedings, in the Courts of common Law, are, 1. ARREST. 2. COMMITMENT and BAIL. 3. PROSECUTION. 4. PROCESS. 5. ARRAIGNMENT, and it's Incidents. 6. PLEA and ISSUE. 7. TRIAL and CONVICTION. 8. CLERGY. 9. JUDGMENT, and it's Consequences. 10. AVOIDER of Judgment. 11. EXECUTION.

4.

An ARREST is the Apprehending, or Restraining, of one's Person; in order to be forthcoming to answer a Crime, with which one is charged or suspected.

5.

This may be done, 1. By Warrant. 2. By an Officer, without Warrant. 3. By a private Person, without Warrant. 4. By Hue and Cry.

6. COM-

6.

COMMITMENT is the Confinement of one's Person in Prison, for safe Custody, by Warrant from proper Authority; unless, in bailable Offences, he puts in sufficient BAIL, or Security for his future Appearance.

7.

PROSECUTION, or the Manner of accusing Offenders, is either by a previous Finding of a grand Jury, as, 1. By PRESENTMENT. 2. By INDICTMENT. Or, without such Finding, 3. By INFORMATION. 4. By APPEAL.

8.

A PRESENTMENT is the Notice taken by a grand Jury of any Offence, from their own Knowledge or Observation.

9.

AN INDICTMENT^y is a written Accusation of one or more Persons of a Crime or Misdemeanor, preferred to, and presented on Oath by, a grand Jury; expressing, with sufficient Certainty, the Person, Time, Place, and Offence.

10.

AN INFORMATION is, 1. At the Suit of the King and a Subject, upon penal Statutes. 2. At the Suit of the King only. Both differing from Indictments principally in this; that they are exhibited by the Informer, or the King's Officer; and not on the Oath of a grand Jury.

^y See APPENDIX, No. X. §. 1.

II.

AN APPEAL is an Accusation, brought by one private Subject against another, of Larciny, Rape, Mayhem, Arson, or Homicide; which the King cannot discharge or pardon.

C H A P. XIII.

Of PROCESS, ARRAIGNMENT, PLEA, and
ISSUE.

I.

PROCESS to bring in an Offender, when indicted in his Absence, is, in Misdemeanors, by *Venire facias*, Distress infinite, and *Capias*; in capital Crimes, by *Capias*² only: and, in both, by Outlawry.

2.

ARRAIGNMENT^a is the Calling of the Prisoner to the Bar of the Court, to answer the Matter of the Indictment.

3.

Incident hereunto are, 1. The Standing mute of the Prisoner; for which, in petit Treason, and Felonies of Death, he shall undergo the *Peine fort & dure*. 2. His Confession; which is either SIMPLE; or by way of APPROVEMENT.

4.

The PLEA, or defensive Matter alleged by the Prisoner, is, 1. A Plea to the Jurisdiction. 2. A

² a See APPENDIX, No. X. §. 1.

Demurrer

Demurrer in point of Law. 3. A Plea in Abatement. 4. A special Plea in Bar; which is, 1st, *Auterfoits acquit*; 2dly, *Auterfoits convict*; 3dly, *Auterfoits attain*; 4thly, a Pardon. 5. The general Issue, Not guilty^b.

5.

Hereupon ISSUE is joined by the Clerk of the Arraings, on behalf of the King.

C H A P. XIV.

Of TRIAL, CONVICTION, and CLERGY.

I.

TRIALS of Offences, by the Laws of ENGLAND, were and are, 1. By the CORONER. 2. By ORDEAL, of either Fire or Water. Both these have been long abolished. 3. By BATTEL, in Appeals and Approvements. 4. By the PEERS of GREAT-BRITAIN. 5. By JURY.

2.

The Method and Process of Trial by JURY is, 1. The Impanelling of the Jury. 2. Challenges; 1st, for Cause; 2dly, peremptory. 3. *Tales de circumstantibus*. 4. The Oath of the Jury. 5. The Evidence. 6. The Verdict, either general or special.

^b See APPENDIX, NO. X. §. I.

3.

CONVICTION^c is when the Prisoner pleads, or is found, guilty: Whereupon, in Felonies, the Prosecutor is intitled to, 1. His Expenses. 2. Restitution of his Goods.

4.

CLERGY^d, or the Benefit thereof, was originally derived from the usurped Jurisdiction of the popish Ecclesiastics; but hath since been new modelled by several Statutes.

5.

It is an Exemption of the Clergy from any other secular Punishment for Felony, than Imprisonment for a Year, at the Court's Discretion; and it is extended likewise, absolutely, to lay Peers, for the first Offence; and to all lay Commoners, for the first Offence also, upon condition of Branding, Imprisonment, or Transportation.

6.

Divers Felonies are ousted of Clergy by particular Statutes.

7.

Felons, on receiving the Benefit of Clergy, (though they forfeit their Goods to the Crown,) are discharged of all clergyable Felonies before committed, and restored in all Capacities and Credits.

^c See APPENDIX, No. X. §. 1.

^d See APPENDIX, No. X. §. 2.

C H A P. XV.

Of JUDGMENT, AVOIDER *thereof*, and
EXECUTION.

1.

JUDGMENT^e (unless any Matter be offered in Arrest thereof) follows upon Conviction; being the Pronouncing of that Punishment which is expressly ordained by Law.

2.

ATTAINDER of a Criminal is the immediate Consequence, 1. Of having Judgment of Death pronounced upon him. 2. Of Outlawry for a capital Offence.

3.

The Consequences of Attainder are, 1. FORFEITURE to the King. 2. CORRUPTION of BLOOD.

4.

FORFEITURE to the King is, 1. Of real Estates, upon Attainder; — in high Treason, absolutely, till the Death of the Pretender, and his Sons; — in Felonies, for the King's Year, Day, and Waste. 2. Of personal Estates, upon Conviction; in all Treason, Misprision of Treason, Felony, excusable Homicide, Standing mute upon Arraignment, atrocious Contempts of the King's Courts, and Flight.

^e See APPENDIX, No. X. §. 1, and 2.

5.

CORRUPTION of BLOOD is an utter Extinction of all inheritable Quality therein: So that, after the King's Forfeiture is first satisfied, the Criminal's Lands escheat to the Lord of the Fee; and he can never afterwards inherit, be inherited, or have any Inheritance derived through him.

6.

Judgments, and their Consequences, may be AVOIDED, 1. By FALSIFYING, OR REVERSING, the Attainder. 2. By REPRIEVE, OR PARDON.

7.

Attainders may be FALSIFIED, OR REVERSED, 1. Without a Writ of Error; either for Faults in the Record, or for Matter *dehors* the Record. 2. By Writ of Error; for Mistakes in the Judgment. 3. By Act of Parliament; for Favour.

8.

A REPRIEVE is a temporary Suspension of the Judgment, 1. *Ex Arbitrio Judicis*. 2. *Ex Necessitate Legis*; for Pregnancy, Insanity, or the Trial of Identity of Person.

9.

A PARDON is a permanent Avider of the Judgment by the King's Majesty, in Offences against his Crown and Dignity; drawn in due Form of Law, allowed in open Court, and thereby making the Offender a new Man.

10.

EXECUTION is the Completion of human Punishment, and must be strictly performed in the Manner which the Law directs.

THE END.

A P P E N -

APPENDIX.

No. I.

Explanation of the TABLE of CONSANGUINITY.

FOR the better understanding of the annexed TABLE of CONSANGUINITY, it may be proper to observe, that CONSANGUINITY is twofold; LINEAL, and COLLATERAL.

No. I.

IN LINEAL CONSANGUINITY every Generation makes a different Degree; as is sufficiently obvious upon mere Inspection of the TABLE. And this, being the only natural Way of reckoning the Degrees in the direct Line, obtains universally in the civil, canon, and common Laws.

WITH regard to COLLATERAL CONSANGUINITY, there are two Ways of reckoning the Degrees of it. The Civilians ^a, in order to settle the Degree of Kindred between two Persons, count UPWARDS from either of them to the common Stock or Ancestor, from whom both are descended; and then DOWNWARDS again to the other; reckoning a Degree for each Person, both ascending and descending. The canon ^b Law, with which the common Law of ENGLAND ^c agrees, begins from the common Ancestor, and reckons only DOWNWARDS; and in what Degree the two Persons, or the most remote of them, are distant from the common Ancestor, that is the Degree in which they are distant from each other.

IN

No. I.

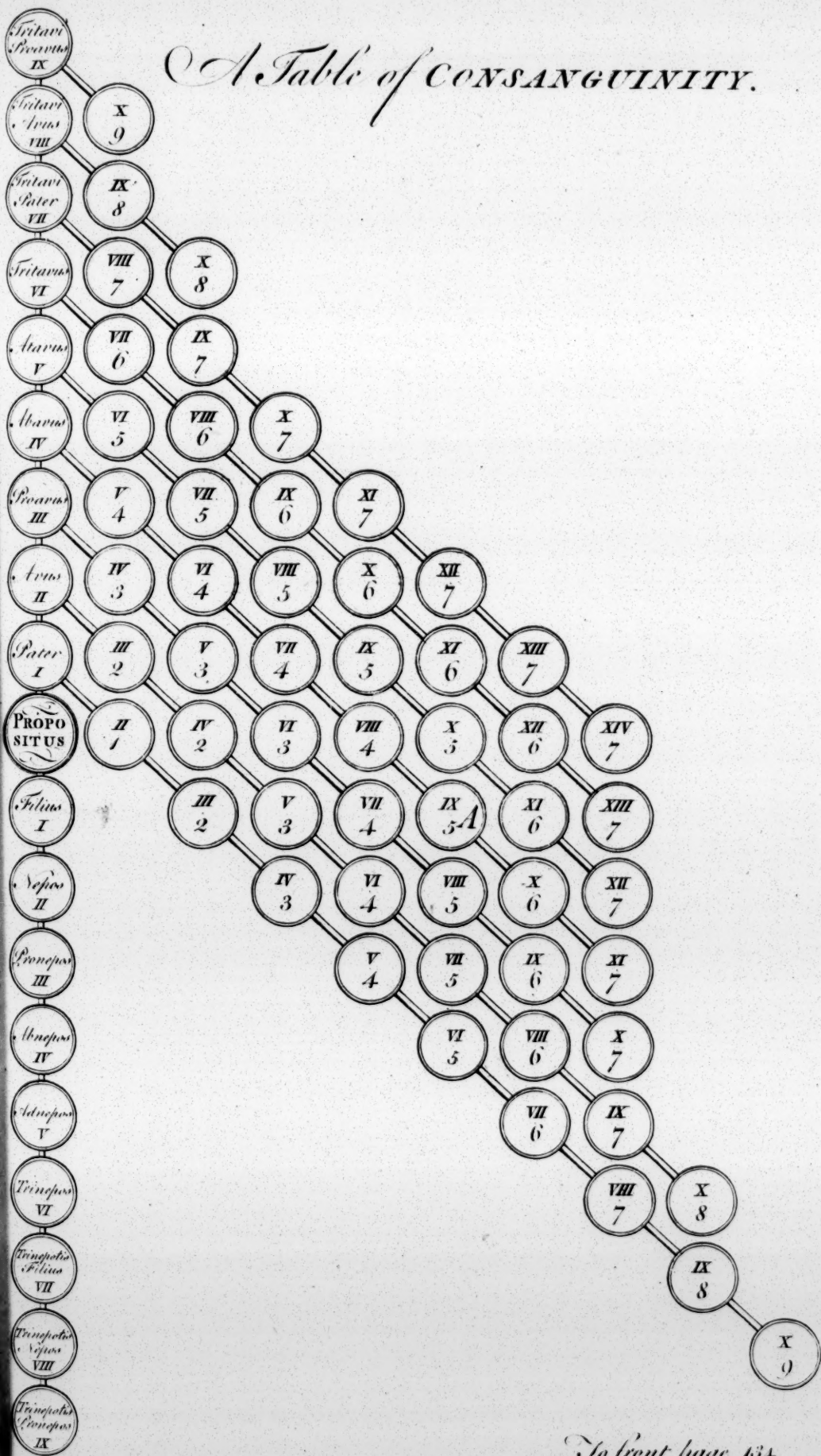
IN this TABLE, (which is no other than the *Arbor Consanguinitatis* usually printed with the Bodies of civil and canon Law,) all the collateral Degrees are expressed, to the TENTH of the Civilians, and the SEVENTH of the Canonists, inclusive; the former being distinguished by the Roman Numerals, the latter by the common Figures.

IF, for Instance, it be enquired, in what Degree the Person marked A is related to the PROPOSITUS, by the civil Computation; we must count from the PROPOSITUS, upwards, to the *Abavus*, FOUR; then, downwards, from the *Abavus* to A, the Person enquired after, FIVE more; in the Whole, NINE: So that he is related to the PROPOSITUS in the NINTH Degree, by the civil Law.

ACCORDING to the Canonists, and common Lawyers, we must begin counting downwards; from the *Abavus* to the PROPOSITUS, FOUR; then again from the *Abavus* to A, FIVE: Which being the greater Number of the two, the FIFTH is therefore the Degree in which, by this Computation, A and the PROPOSITUS are of Kin to each other.

No. II.

A Table of CONSANGUINITY.



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1

No. II.

Explanation of the TABLE of DESCENTS.

THE TABLE of DESCENTS is intended to exhibit, to the Eye of the Student, the successive Order, in which he must search for the Heir of a Person (as JOHN STILES) who dies seised of an Estate in Fee simple.

IF such Estate came to him by his own Acquisition, or PURCHASE, and not by Descent from any of his Ancestors; then in the first place succeeds the eldest Son, *Matthew Stiles*, or his Issue: (No. 1.) If his Line be extinct, then *Gilbert Stiles* and the other Sons, respectively, in Order of Birth, or their Issue: (No. 2.) In Default of these, ALL the Daughters together, *Margaret* and *Charlotte Stiles*, or their Issue. (No. 3.) — On Failure of the Descendants of JOHN STILES himself, the Issue of *Geoffery* and *Lucy Stiles*, his Parents, is called in: viz, First, *Francis Stiles*, the eldest Brother of the whole Blood, or his Issue: (No. 4.) Then *Oliver Stiles*, and the other whole Brothers, respectively, in Order of Birth, or their Issue: (No. 5.) Then the Sisters of the whole Blood, ALL together, *Bridget* and *Alice Stiles*, or their Issue. (No. 6.) — In Defect of these, the Issue of *George* and *Cecilia Stiles*, his Father's Parents; Respect being still had to their Age and Sex: (No. 7.) Then the Issue of *Walter* and *Christian Stiles*, the Parents of his paternal Grandfather: (No. 8.) Then the Issue of *Richard* and *Anne Stiles*, the Parents of his paternal Grandfather's Father: (No. 9.) And so on in the paternal Grandfather's paternal Line, or Blood of *Walter Stiles*, *in infinitum*. — In Defect of these, the Issue of *William* and *Jane Smith*, the Parents of his paternal Grandfather's Mother: (No. 10.) And so on in the paternal Grandfather's maternal Line, or Blood of *Christian Smith*, *in infinitum*; till both the immediate Bloods of *George Stiles*, the paternal Grandfather, are spent. — Then we must resort to the Issue of *Luke* and *Francis Kempe*, the Parents of JOHN STILES's paternal Grandmother: (No. 11.) Then to the Issue of *Thomas* and *Sarah Kempe*, the Parents of his paternal Grandmother's Father: (No. 12.) And so on in the paternal Grand-

No. II.

Grandmother's paternal Line, or Blood of *Luke Kempe*, in *infinitum*. — In Default of which, we must call in the Issue of *Charles* and *Mary Holland*, the Parents of his paternal Grandmother's Mother: (No. 13.) And so on in the paternal Grandmother's maternal Line, or Blood of *Frances Holland*, in *infinitum*; till both the immediate Bloods of *Cecilia Kempe*, the paternal Grandmother, are also spent. — Whereby the PATERNAL Blood of JOHN STILES entirely failing, Recourse must then, and not before, be had to his MATERNAL Relations; or the Blood of the *Bakers*, (No. 14, 15, 16.) *Willis's*, (No. 17.) *Thorpes*, (No. 18, 19.) and *Whites*; (No. 20.) in the same regular successive Order as in the paternal Line.

IN case JOHN STILES was not himself the PURCHASOR, but the Estate in fact came to him by DESCENT from his Father, Mother, or any higher Ancestor, there is this Difference; that the Blood of that Line of Ancestors, from which it did not descend, can never inherit; but the Estate shall rather escheat to the Lord of the Fee. Thus if it descended from *Geoffery Stiles*, the Father, the Blood of *Lucy Baker*, the Mother, is perpetually excluded: And so, *vice versa*, if it descended from *Lucy Baker*, it cannot descend to the Blood of *Geoffery Stiles*. This, in either case, cuts off one half of the TABLE from Succession: And further, if it can be shewn to have descended from *George Stiles*, this cuts off three fourths; for now the Blood not only of *Lucy Baker*, but also of *Cecilia Kempe*, is excluded. If, lastly, it descended from *Walter Stiles*, this narrows the Succession still more, and cuts off seven eighths of the TABLE; for now, neither the Blood of *Lucy Baker*, nor of *Cecilia Kempe*, nor of *Christian Smith*, can ever succeed to the Inheritance. And the like Rule will hold upon Descents from any other Ancestors.

THE Student should bear in Mind, that, during this whole Process, JOHN STILES is the only Person supposed to have been actually SEISED of the Estate: For if ever it comes to be vested in any other Person, as Heir to JOHN STILES, a new Order of Succession must be observed upon the Death of such Heir; since He, by his own Seisin, now becomes himself an Ancestor, or *Stipes*, and must be put in the place of JOHN STILES. The Figures therefore denote the Order, in which the several Classes would succeed to JOHN STILES, and not to each other:

And,

And, before we search for an Heir in any of the higher Figures, (as No. 8.) we must be first assured that all the lower Classes (from No. 1 to 7.) were extinct, at JOHN STILES's Decease.

No. II.

SUCH is apprehended to be the uniform Course of Inheritance, according to the Law of ENGLAND. The Student should however be informed, that the Class, No. 10, would be postponed to No. 11, in consequence of the Doctrine laid down, *arguendo*, by Justice MANWOOD, in the Case of CLERE and BROOKE^d; from whence it is adopted by Lord BACON^e, and Sir MATTHEW HALE^f. ^d PLOWD. 450. ^e Elem. c. 1. ^f Hist. C.L. 240. — And yet, notwithstanding these respectable Authorities, the Compiler of this TABLE hath ventured to give the Preference therein to No. 10 before No. 11; for the following Reasons:

1. BECAUSE this Point was not the PRINCIPAL Question in the Case of CLERE and BROOKE; but the Law concerning it is delivered *obiter* only, and in the course of Argument, by Justice MANWOOD; though afterwards said to be confirmed by the three other Justices in separate, extrajudicial, Conferences with the Reporter.

2. BECAUSE the Chief-Justice, DYER, in reporting the Resolution of the Court in what seems to be the same Case^g, takes no Notice of this Doctrine.

^g DYER, 314.

3. BECAUSE it appears, from PLOWDEN's Report, that very many Gentlemen of the Law were dissatisfied with this Position of Justice MANWOOD.

4. BECAUSE the Position itself destroys the otherwise entire and regular Symmetry of our legal Course of Descents, as is manifest by inspecting the TABLE; and destroys also that constant Preference of the male Stocks in the Law of Inheritance, for which perhaps an additional Reason might be given, besides the mere Dignity of Blood.

5. BECAUSE it introduces all that Uncertainty and Contradiction, pointed out by an ingenious Author^b; ^b Law of Inheritances, 2d Edit. p. 30, 38, 61, 62, 66. and establishes a collateral Doctrine, incompatible with the principal Point resolved in the Case of CLERE and BROOKE, viz. the Preference of No. 11 to No. 14. And, though that learned Writer proposes to rescind the PRINCIPAL Point then resolved, in order to clear this Difficulty; it is apprehended, that the Difficulty may

No. II.

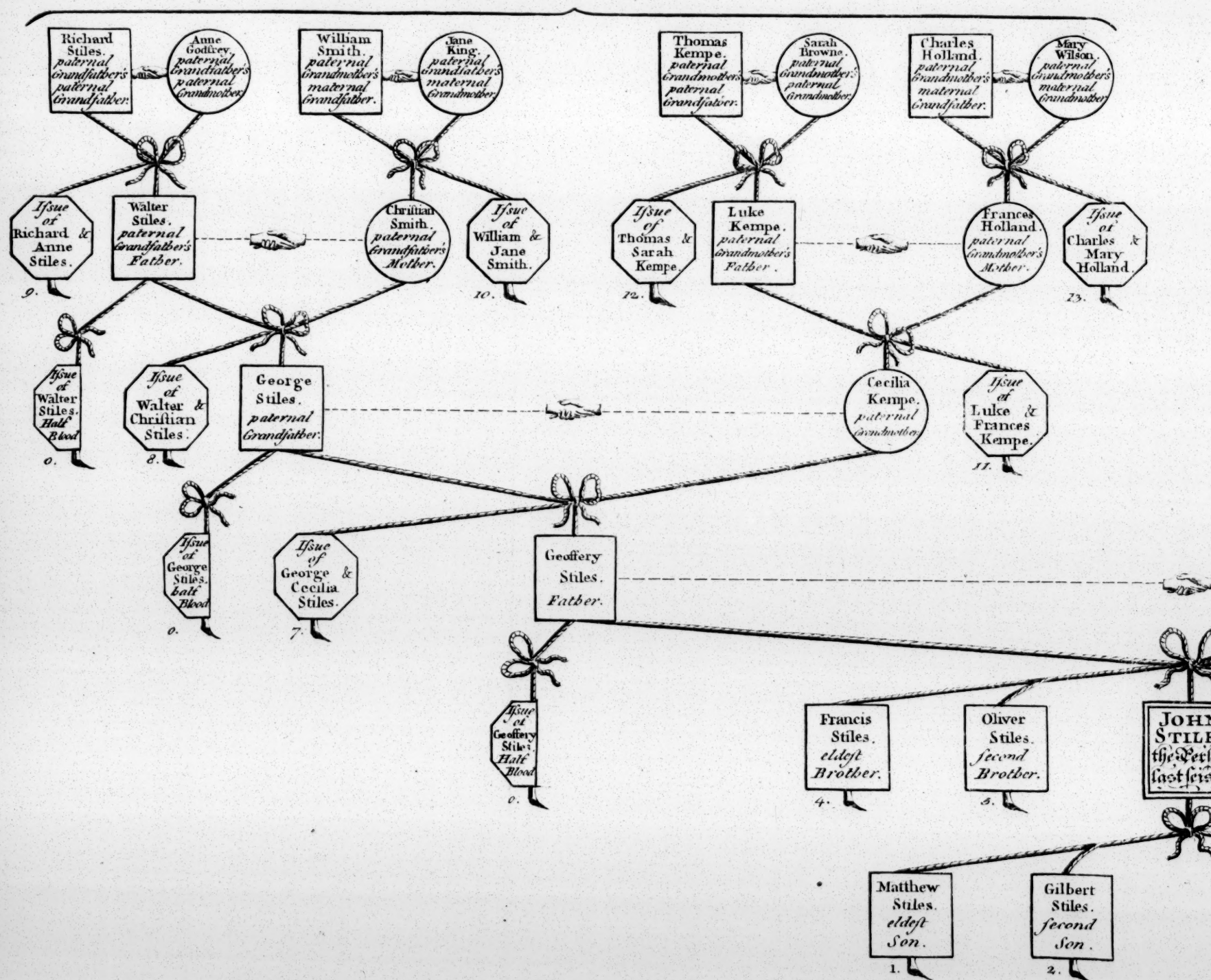
may be better cleared, by rejecting the COLLATERAL Doctrine, which was never yet resolved at all.

6. BECAUSE by the Reason that is given for this Doctrine, in PLOWDEN, BACON, and HALE, (viz. That in any Degree, paramount the first, the Law respecteth Proximity, and not Dignity of Blood,) No. 18 ought also to be preferred to No. 16; which is directly contrary to
i Hist. C. L. 247. the eighth Rule laid down by HALE himself i.

7. BECAUSE this Position seems to contradict the
k Co. Litt. 126. allowed Doctrine of Sir EDWARD COKE k; who lays it
HAWK. Abr. in down (under different Names) that the Blood of the
loc. KEMPES (*alias* SANDIES) shall not inherit till the Blood of the STILES's (*alias* FAIRFIELDS) fail. Now the Blood of the STILES's does certainly not fail, till both No. 9 and No. 10 are extinct. Wherefore No. 11 (being the Blood of the KEMPES) ought not to inherit till then.

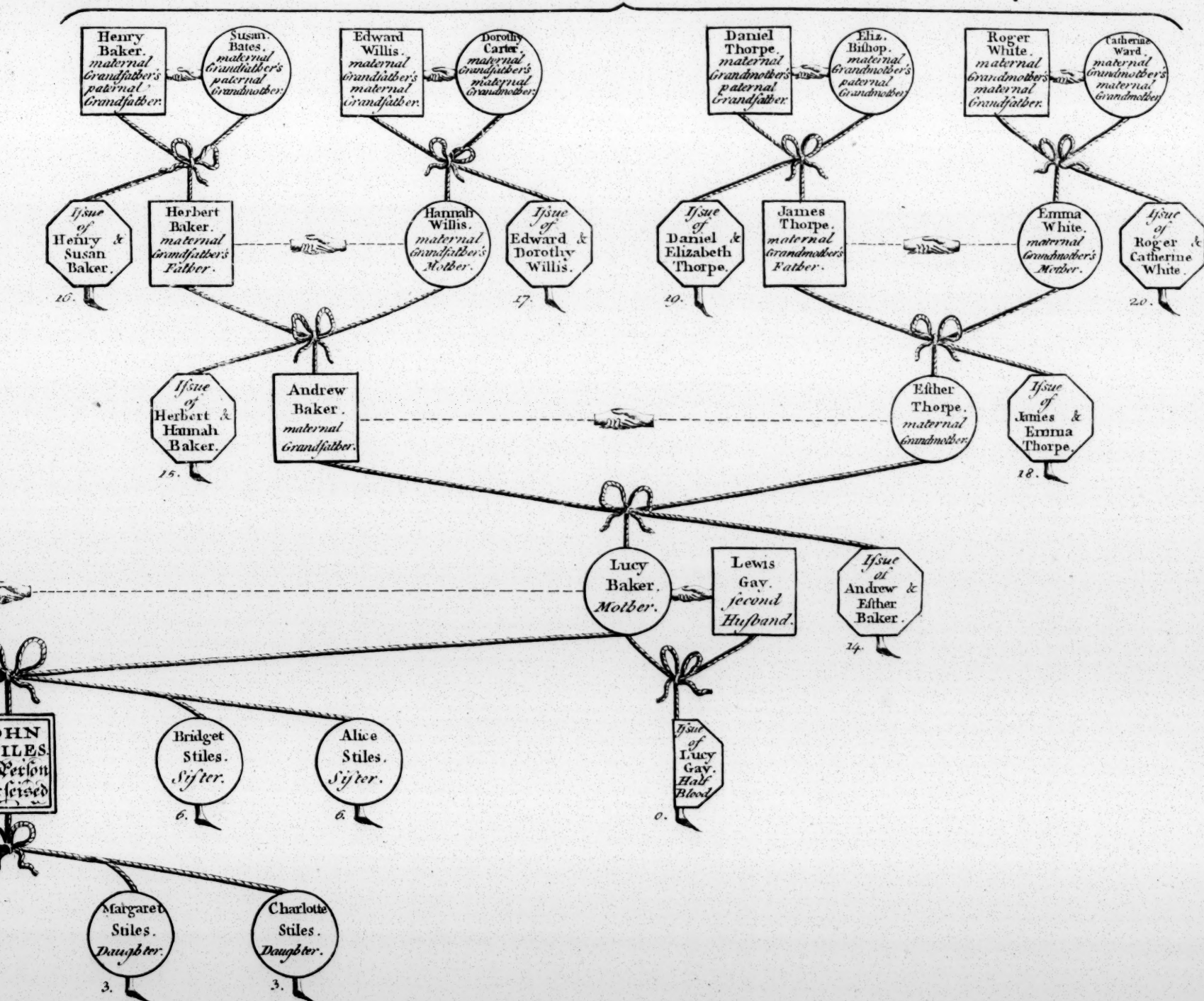
8. BECAUSE in the Case, M. 12 ED. IV. 14. l (much
l FITZH. Abr. t. Discnt. 2. BRO. relied on in that of CLERE and BROOKE) it is laid down
Abr. t. Discnt. 38. as a Rule, that "*Cestuy, que doit inheriter al Pere, doit*
m Hist. C. L. 243. "*inheriter al Fils.*" And so Sir M. HALE m says, "that
"though the Law excludes the Father from inheriting,
"yet it substitutes and directs the Descent, as it should
"have been, had the Father inherited." Now it is settled, by the Resolution in CLERE and BROOKE, that No. 10 should have inherited to *Geoffery Stiles*, the Father, before No. 11; and therefore No. 10 ought also to be preferred in inheriting to JOHN STILES, the Son.

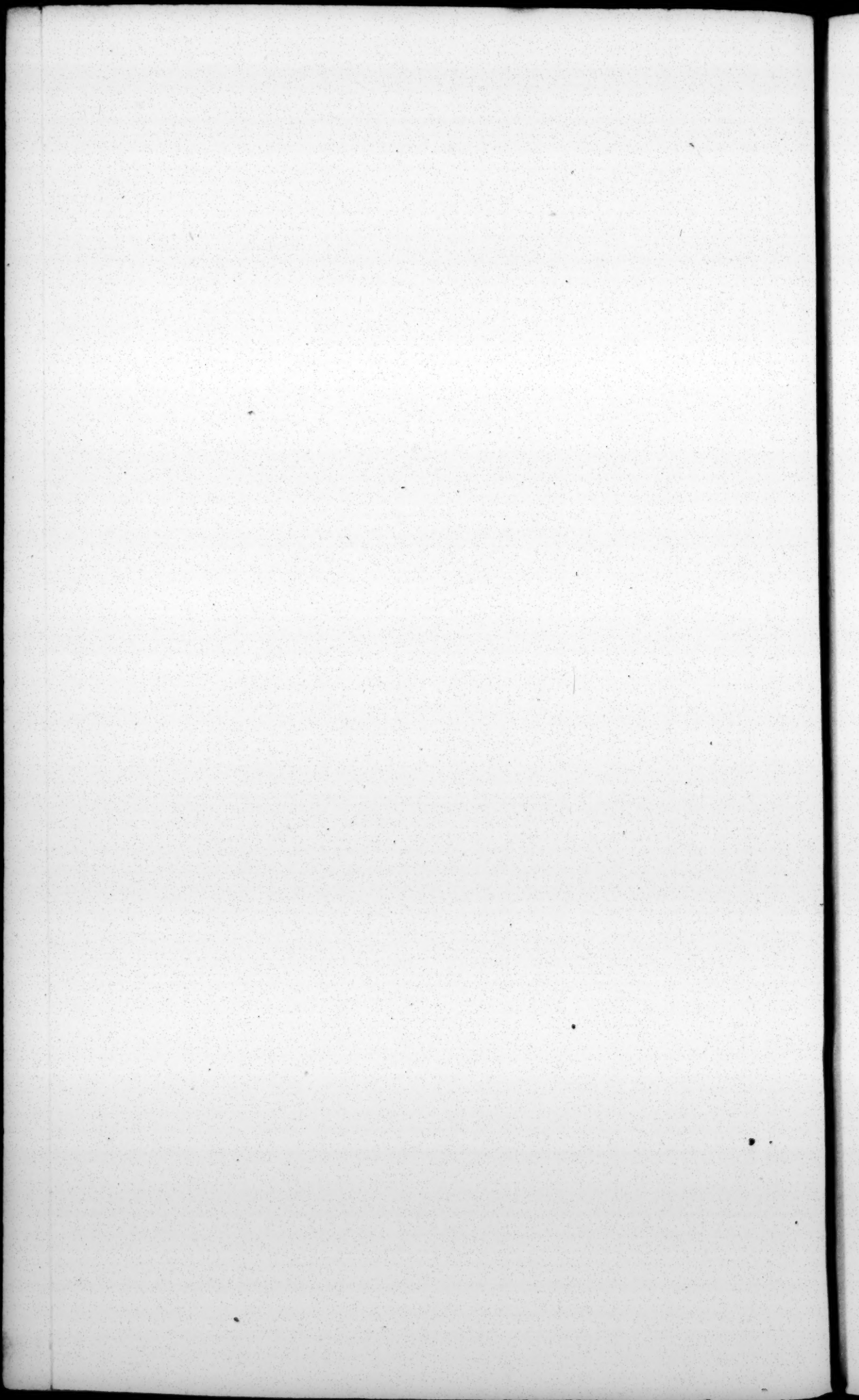
PATERNAL LINE



Descents

MATERNAL LINE





No. III.

Vetus Carta FEOFFAMENTI.

SCiant presentes & futuri, quod ego *Willielmus*, filius *Premises*.

Willielmi de Segenbo, dedi, concessi, & hac presenti carta mea confirmavi, *Johanni* quondam filio *Johannis* de *Saleford*, pro quadam summa pecunie quam michi dedit pre manibus, unam acram terre mee arabilis, jacentem in campo de *Saleford*, juxta terram quondam *Richardi* de *la Mare*: **Habendam & Tenendam** totam predictam *Habendum, and Tenendum.* acram terre, cum omnibus ejus pertinentiis, prefato *Johanni*, & heredibus suis, & suis assignatis, de capitalibus dominis feodi: **Reddendo** & faciendo annuatim eisdem *Reddendum.* dominis capitalibus servitia inde debita & consueta: **Et** *Warranty.* ego predictus *Willielmus*, & heredes mei, & mei assignati, totam predictam acram terre, cum omnibus suis pertinentiis, predicto *Johanni* de *Saleford*, & heredibus suis, & suis assignatis, contra omnes gentes warrantizabimus in perpetuum. **In cujus** rei testimonium huic presenti car- *Conclusion.* te figillum meum apposui: **His** testibus, *Nigello* de *Saleford*, *Johanne* de *Seybroke*, *Radulpho* clerico de *Saleford*, *Johanne* molendario de eadem villa, & aliis. **Data** apud *Saleford* die *Veneris* proximo ante festum sancte *Margarete* virginis, anno regni regis *EDWARDI* filii regis *EDWARDI* sexto.

(L. S.)

Memorandum, quod die & anno infrascriptis plena & pacifica seifina acre infraspacificata, cum pertinentiis, data & deliberata fuit per infranominatum *Willielmum* de *Segenbo* infranominato *Johanni* de *Saleford*, in propriis personis suis, secundum tenorem & effectum carte infrascripte, in presentia *Nigelli* de *Saleford*, *Johannis* de *Seybroke*, & aliorum.

Livery of Seifin
endorsed.

No. IV.

No. IV.

A modern Conveyance by LEASE and RELEASE.

§. 1. LEASE, or BARGAIN and SALE, for a Year.

Premises.

Parties.

Consideration.

Bargain and Sale.

Parcels.

This Indenture, made the third Day of September, in the twenty first Year of the Reign of our sovereign Lord GEORGE the second by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven, between Abraham Barker of Dale Hall in the County of Norfolk, Esquire, and Cecilia his Wife, of the one Part, and David Edwards of Lincoln's Inn in the County of Middlesex, Esquire, and Francis Golding of the City of Norwich, Clerk, of the other Part, witnesseth; that the said Abraham Barker and Cecilia his Wife, in Consideration of five Shillings of lawful Money of Great Britain to them in Hand paid by the said David Edwards and Francis Golding at or before the Ensealing and Delivery of these Presents, (the Receipt whereof is hereby acknowledged,) and for other good Causes and Considerations them the said Abraham Barker and Cecilia his Wife hereunto specially moving, have bargained and sold, and by these Presents do, and each of them doth, bargain and sell, unto the said David Edwards and Francis Golding, their Executors, Administrators, and Assigns, **Al**l that the capital Messuage, called Dale Hall in the Parish of Dale in the said County of Norfolk, wherein the said Abraham Barker and Cecilia his Wife now dwell, and all those their Lands in the said Parish of Dale called or known by the Name of Wilson's Farm, containing by Estimation five hundred and forty Acres, be the same more or less, together with all and singular Houses, Dovehouses, Barns, Buildings, Stables, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Waters, Watercourses, Fishings, Privileges, Profits, Easements, Commodities, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever to the said capital Messuage and

No. IV.

and Farm belonging or appertaining, or with the same used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel, or Member thereof, or as belonging to the same or any Part thereof; and the Reversion and Reversions, Remainder and Remainders, yearly and other Rents, Issues, and Profits thereof, and of every Part and Parcel thereof: **To have and to hold** the said capital Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premises herein before mentioned or intended to be bargained and sold, and every Part and Parcel thereof, with their and every of their Rights, Members, and Appurtenances, unto the said *David Edwards* and *Francis Golding*, their Executors, Administrators, and Assigns, from the Day next before the Day of the Date of these Presents, for and during, and unto the full End and Term of, one whole Year from thence next ensuing and fully to be complete and ended: **Yielding** and paying therefore unto the said *Abraham Barker*, and *Cecilia* his Wife, and their Heirs or Assigns, the yearly Rent of one Pepper-Corn at the Expiration of the said Term, if the same shall be lawfully demanded: **To the Intent** and Purpose, that by Virtue of these Presents, and of the Statute for transferring Uses into Possession, the said *David Edwards* and *Francis Golding* may be in the actual Possession of the Premises, and be thereby enabled to take and accept a Grant and Release of the Freehold, Reversion, and Inheritance of the same Premises, and of every Part and Parcel thereof, to them, their Heirs, and Assigns; to the Uses, and upon the Trusts, thereof to be declared by another Indenture, intended to bear Date the Day next after the Day of the Date hereof. **In Witness** whereof the Parties to these Presents their Hands and Seals have subscribed and set, the Day and Year first abovewritten.

Habendum.

Reddendum.

Intent.

Conclusion.

Sealed, and delivered, being first duly stamped, in the presence of
George Carter.
William Browne.

Abraham Barker. (L. S.)
Cecilia Barker. (L. S.)
David Edwards. (L. S.)
Francis Golding. (L. S.)

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§. 2. Deed of RELEASE.

Premises.

Parties.

Recital.

Consideration.

This Indenture of five Parts, made the fourth Day of *September*, in the twenty first Year of the Reign of our sovereign Lord *GEORGE* the second by the Grace of God King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven, between *Abraham Barker* of *Dale Hall* in the County of *Norfolk*, Esquire, and *Cecilia* his Wife, of the first Part; *David Edwards* of *Lincoln's Inn* in the County of *Middlesex*, Esquire, Executor of the last Will and Testament of *Lewis Edwards*, of *Cowbridge* in the County of *Glamorgan*, Gentleman, his late Father, deceased, and *Francis Golding* of the City of *Norwich*, Clerk, of the second Part; *Charles Broegne* of *Enstone* in the County of *Oxford*, Gentleman, and *Richard More* of the City of *Bristol*, Merchant, of the third Part; *John Barker*, Esquire, Son and Heir apparent of the said *Abraham Barker*, of the fourth Part; and *Katherine Edwards*, Spinster, one of the Sisters of the said *David Edwards*, of the fifth Part. **Whereas** a Marriage is intended, by the Permission of God, to be shortly had and solemnized between the said *John Barker* and *Katherine Edwards*: **Now this Indenture witnesseth**, that in Consideration of the said intended Marriage, and of the Sum of five thousand Pounds, of good and lawful Money of *Great Britain*, to the said *Abraham Barker*, (by and with the Consent and Agreement of the said *John Barker*, and *Katherine Edwards*, testified by their being Parties to, and their Sealing and Delivery of, these Presents,) by the said *David Edwards* in Hand paid at or before the Enscaling and Delivery hereof, being the Marriage Portion of the said *Katherine Edwards*, bequeathed to her by the last Will and Testament of the said *Lewis Edwards*, her late Father, deceased; the Receipt and Payment whereof the said *Abraham Barker* doth hereby acknowledge, and thereof, and of every Part and Parcel thereof, they the said *Abraham Barker*, *John Barker*, and *Katherine Edwards*, do, and each of them doth, release, acquit, and discharge the said *David Edwards*, his Executors, and Administrators, for ever by these Presents: And for providing a competent Jointure and Provision of Maintenance for the said *Katherine Edwards*, in case she shall,

shall, after the said intended Marriage had, survive and overlive the said *John Barker* her intended Husband: And for settling and assuring the capital Messuage, Lands, Tenements, and Hereditaments, hereinafter mentioned, unto such Uses, and upon such Trusts, as are hereinafter expressed and declared: And for and in Consideration of the Sum of five Shillings of lawful Money of *Great Britain* to the said *Abraham Barker* and *Cecilia* his Wife in Hand paid by the said *David Edwards* and *Francis Golding*, and of ten Shillings of like lawful Money to them also in Hand paid by the said *Charles Browne* and *Richard More*, at or before the Enfealing and Delivery hereof, (the Receipt whereof is hereby respectively acknowledged,) they the said *Abraham Barker* and *Cecilia* his Wife, have, and each of Release. them hath, granted, bargained, sold, released, and confirmed, and by these Presents do, and each of them doth, grant, bargain, sell, release, and confirm, unto the said *David Edwards* and *Francis Golding*, their Heirs and Assigns, All that the capital Messuage, called *Dale-Hall* in Parcels. the Parish of *Dale* in the said County of *Norfolk*, wherein the said *Abraham Barker* and *Cecilia* his Wife now dwell, and all those their Lands in the said Parish of *Dale* called or known by the Name of *Wilson's Farm*, containing by Estimation five hundred and forty Acres, be the same more or less, together with all and singular Houses, Dovehouses, Barns, Buildings, Stables, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Underwoods, Ways, Waters, Watercourses, Fishings, Privileges, Profits, Easements, Commodities, Advantages, Emoluments, Hereditaments, and Appurtenances whatsoever to the said capital Messuage and Farm belonging or appertaining, or with the same used or enjoyed, or accepted, reputed, taken, or known, as Part, Parcel, or Member thereof, or as belonging to the same or any Part thereof; (all which said Premises are now in Mention of Bargain and Sale. the actual Possession of the said *David Edwards* and *Francis Golding*, by virtue of a Bargain and Sale to them thereof made by the said *Abraham Barker* and *Cecilia* his Wife for one whole Year, in consideration of five Shillings to them paid by the said *David Edwards* and *Francis Golding*, in and by one Indenture bearing Date the Day next before the Day of the Date hereof, and by force of the Statute for transferring Uses into Possession;) and the Reversion and Reversions, Remainder and Remainders, yearly and

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Habendum,

To the Use of
the Grantors till
Marriage :Then of the Hus-
band for Life, *sans*
Waste :Remainder to
Trustees, to pre-
serve contingent
Remainders :Remainder to the
Wife for Life, for
her Jointure, in
Bar of Dower :

and other Rents, Issues, and Profits thereof, and of every Part and Parcel thereof, and also all the Estate, Right, Title, Interest, Trust, Property, Claim, and Demand whatsoever, both at Law and in Equity, of them the said *Abraham Barker* and *Cecilia* his Wife, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises : **To have and to hold** the said capital Messuage, Lands, Tenements, Hereditaments, and all and singular other the Premises herein before mentioned to be hereby granted and released, with their and every of their Appurtenances, unto the said *David Edwards* and *Francis Golding*, their Heirs and Assigns, to such Uses, upon such Trusts, and to and for such Intents and Purposes as are hereinafter mentioned, expressed, and declared, of and concerning the same : That is to say, to the Use and Behoof of the said *Abraham Barker*, and *Cecilia* his Wife, according to their several and respective Estates and Interests therein, at the Time of, or immediately before, the Execution of these Presents, until the Solemnization of the said intended Marriage : And from and after the Solemnization thereof, to the Use and Behoof of the said *John Barker*, for and during the Term of his natural Life ; without Impeachment of or for any Manner of Waste : And from and after the Determination of that Estate, then to the Use of the said *David Edwards* and *Francis Golding*, and their Heirs, during the Life of the said *John Barker*, upon Trust to support and preserve the contingent Uses and Estates hereinafter limited from being defeated and destroyed, and for that Purpose to make Entries, or bring Actions, as the Case shall require ; but nevertheless to permit and suffer the said *John Barker*, and his Assigns, during his Life, to receive and take the Rents and Profits thereof, and of every Part thereof, to and for his and their own Use and Benefit : And from and after the Decease of the said *John Barker*, then to the Use and Behoof of the said *Katherine Edwards*, his intended Wife, for and during the Term of her natural Life, for her Jointure, and in Lieu, Bar, and Satisfaction of her Dower and Thirds at common Law, which she can or may have or claim, of, in, to, or out of, all, and every, or any, of the Lands, Tenements, and Hereditaments, whereof or wherein the said *John Barker* now is, or at any Time or Times hereafter during the Coverture between them shall be, seised of any Estate of Freehold or

Inhe-

Inheritance : And from and after the Decease of the said *Katherine Edwards*, or other sooner Determination of the said Estate, then to the Use and Behoof of the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, for and during, and unto the full End and Term of, five hundred Years from thence next ensuing and fully to be complete and ended, without Impeachment of Waste : upon such Trusts nevertheless, and to and for such Intents and Purposes, and under and subject to such Provisoos and Agreements, as are herein after mentioned, expressed, and declared of and concerning the same : And from and after the End, Expiration, or other sooner Determination of the said Term of five hundred Years, and subject thereunto, to the Use and Behoof of the first Son of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, and of the Heirs of the Body of such first Son lawfully issuing ; and for Default of such Issue, then to the Use and Behoof of the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and of all and every other the Son and Sons of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, severally, successively, and in Remainder, one after another, as they and every of them shall be in Seniority of Age and Priority of Birth, and of the several and respective Heirs of the Body and Bodies of all and every such Son and Sons lawfully issuing ; the elder of such Sons, and the Heirs of his Body issuing, being always to be preferred and to take before the younger of such Sons, and the Heirs of his or their Body or Bodies issuing : And for Default of such Issue, then to the Use and Behoof of all and every the Daughter and Daughters of the said *John Barker* on the Body of the said *Katherine Edwards* his intended Wife to be begotten, to be equally divided between them, (if more than one,) as Tenants in share and share alike, as Tenants in common and not as common, Jointenants, and of the several and respective Heirs of the Body and Bodies of all and every such Daughter and Daughters lawfully issuing : And for Default of such Issue, then to the Use and Behoof of the Heirs of the Body of him the said *John Barker* lawfully issuing : And for Default of such Heirs, then to the Use and Behoof of the said *Cecilia*, the Wife of *Abraham Barker*, and of her Heirs and Assigns for ever. And as to, for, and concerning the said Term of five hundred Years herein before limited

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Remainder to other Trustees for a Term, upon Trusts after mentioned :

Remainder to the first and other Sons of the Marriage in Tail :

Remainder to the Daughters,

as Tenants in common, in Tail :

Remainder to the Husband in Tail :

Remainder to the Husband's Mother in Fee.

The Trust of the Term declared ;

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to raise Portions
for younger Chil-
dren,

payable at certain
Times,

with Mainte-
nance at the rate
of 4 per cent.

and Benefit of
Survivorship.

mitted to the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, as aforesaid, it is hereby declared and agreed by and between all the said Parties to these Presents, that the same is so limited to them upon the Trusts, and to and for the Intents and Purposes, and under and subject to the Provisoos and Agreements, hereinafter mentioned, expressed, and declared, of and concerning the same: That is to say, in case there shall be an eldest or only Son and one more or other Child or Children of the said *John Barker*, on the Body of the said *Katherine* his intended Wife to be begotten, then upon Trust that they the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, by Sale or Mortgage of the said Term of five hundred Years, or by such other Ways and Means as they or the Survivor of them, or the Executors or Administrators of such Survivor shall think fit, shall and do raise and levy, or borrow and take up at Interest, the Sum of four thousand Pounds of lawful Money of *Great Britain*, for the Portion or Portions of such other Child and Children (besides an eldest or only Son) as aforesaid, to be equally divided between them (if more than one) Share and Share alike; the Portion or Portions of such of them as shall be a Son or Sons to be paid at his or their respective Age or Ages of twenty one Years; and the Portion or Portions of such of them as shall be a Daughter or Daughters to be paid at her or their respective Age or Ages of twenty one Years, or Day or Days of Marriage, which shall first happen. And upon this further Trust, that in the mean time and until the same Portions shall become payable as aforesaid, the said *Charles Browne* and *Richard More*, their Executors, Administrators, and Assigns, shall and do, by and out of the Rents, Issues, and Profits of the Premises aforesaid, raise and levy such competent yearly Sum and Sums of Money for the Maintenance and Education of such Child or Children, as shall not exceed in the whole the Interest of their respective Portions after the rate of four Pounds in the hundred yearly. Provided always, that in case any of the same Children shall happen to die before his, her, or their Portions shall become payable as aforesaid, then the Portion or Portions of such of them so dying shall go and be paid unto and be equally divided among the Survivor or Survivors of them, when and at such time as the original Portion or Portions of such surviving Child or Children shall

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shall become payable as aforesaid. Provided also, that in case there shall be no such Child or Children of the said *John Barker* on the Body of the said *Katherine* his intended Wife begotten, besides an eldest or only Son; or in case all and every such Child or Children shall happen to die before all or any of their said Portions shall become due and payable as aforesaid; or in case the said Portions, and also such Maintenance as aforesaid, shall by the said *Charles Browne* and *Richard More*, their Executors, Administrators, or Assigns, be raised and levied by any of the Ways and Means in that behalf afore-mentioned; or in case the same by such Person or Persons, as shall for the time being be next in Reversion or Remainder of the same Premises expectant upon the said Term of five hundred Years, shall be paid, or well and duly secured to be paid, according to the true Intent and Meaning of these Presents; then and in any of the said cases, and at all times thenceforth, the said Term of five hundred Years, or so much thereof as shall remain unfold and undisposed of for the Purposes aforesaid, shall cease, determine, and be utterly void to all Intents and Purposes, any thing herein contained to the contrary thereof in any wise notwithstanding. **Provided** also, and it is hereby further declared and agreed by and between all the said Parties to these Presents, that in case the said *Abraham Barker* or *Cecilia* his Wife, at any time during their Lives, or the Life of the Survivor of them, with the Approbation of the said *David Edwards* and *Francis Golding*, or the Survivor of them, or the Executors and Administrators of such Survivor, shall settle, convey, and assure other Lands and Tenements of an Estate of Inheritance in Fee simple, in Possession, in some convenient Place or Places within the Realm of *England*, of equal or better Value than the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, hereby granted and released, and in Lieu, and Recompense thereof, unto and for such and the like Uses, Intents, and Purposes, and upon such and the like Trusts, as the said capital Messuage, Lands, Tenements, Hereditaments, and Premises are hereby settled and assured unto and upon, then and in such case, and at all times from thenceforth, all and every the Use and Uses, Trust and Trusts, Estate and Estates herein before limited, expressed, and declared of or concerning the same, shall cease, determine, and be utterly void to all Intents and Purposes; and the same capital Messuage, Lands, Tenements, Hereditaments,

If no such Child,

or if all die,

or if the Portions be raised,

or paid,

or secured by the Person next in Remainder; the Residue of the Term to cease.

Condition, that the Uses and Estates hereby granted shall be void, on settling other Lands of equal value in recompense.

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Covenant, to levy
a Fine.

taments, and Premises, shall from thenceforth remain and be to and for the only proper Use and Behoof of the said *Abraham Barker* and *Cecilia* his Wife, or the Survivor of them, according to the respective Estates and Interests therein, that they or either of them would have had in case this present Indenture had never been made; and to and for no other Use, Intent, or Purpose whatsoever; any thing herein contained to the contrary thereof in any wise notwithstanding. **And**, for the Considerations aforesaid, and for barring all Estates tail, and all Remainders and Reversions thereupon expectant or depending, if any be now subsisting and unbarred or otherwise undetermined, of and in the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, hereby granted and released, or mentioned to be hereby granted and released, or any of them, or any Part thereof, the said *Abraham Barker* for himself and the said *Cecilia* his Wife, his and her Heirs, Executors, and Administrators, and the said *John Barker* for himself, his Heirs, Executors, and Administrators, do, and each of them doth, respectively covenant, promise, and grant, to and with the said *David Edwards* and *Francis Golding*, their Heirs, Executors, and Administrators, by these Presents, that they the said *Abraham Barker* and *Cecilia* his Wife, and *John Barker*, shall and will, at the Costs and Charges of the said *Abraham Barker*, before the End of *Michaelmas* Term next ensuing the Date hereof, acknowledge and levy, before his Majesty's Justices of the Court of common Pleas at *Westminster*, one or more Fine or Fines, *jur Cognizance de Droit, come ceo, &c.* with Proclamations according to the Form of the Statutes in that case made and provided, and the usual Course of Fines in such cases accustomed, unto the said *David Edwards*, and his Heirs, of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, by such apt and convenient Names, Quantities, Qualities, Number of Acres, and other Descriptions to ascertain the same, as shall be thought meet: Which said Fine or Fines, so as aforesaid or in any other manner levied and acknowledged, or to be levied and acknowledged, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended, to be and enure, and are hereby declared by all the said Parties to these Presents to be and enure, to the Use and Behoof of the said *David Edwards*, and his Heirs and Assigns; to the Intent and

Pur-

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Purpose that the said *David Edwards* may, by virtue of the said Fine or Fines so covenanted and agreed to be levied as aforesaid, be and become perfect Tenant of the Freehold of the said capital Messuage, Lands, Tenements, Hereditaments, and all other the Premises, to the end that one or more good and perfect common Recovery or Recoveries may be thereof had and suffered, in such Manner as is hereinafter for that Purpose mentioned. And it is hereby declared and agreed by and between all the said Parties to these Presents, that it shall and may be lawful to and for the said *Francis Golding*, at the Costs and Charges of the said *Abraham Barker*, before the End of *Michaelmas* Term next ensuing the Date hereof, to sue forth and prosecute out of his Majesty's high Court of Chancery one or more Writ or Writs of Entry *sur Disseisin en le Poſt*, returnable before his Majesty's Justices of the Court of common Pleas at *Westminster*, thereby demanding by apt and convenient Names, Quantities, Qualities, Number of Acres, and other Descriptions, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, against the said *David Edwards*; to which said Writ, or Writs, of Entry he the said *David Edwards* shall appear *gratis*, either in his own proper Person, or by his Attorney thereto lawfully authorized, and vouch over to Warranty the said *Abraham Barker*, and *Cecilia* his Wife, and *John Barker*; who shall also *gratis* appear in their proper Persons, or by their Attorney, or Attorneys, thereto lawfully authorized, and enter into the Warranty, and vouch over to Warranty the common Vouchee of the same Court; who shall also appear, and after Imparance shall make Default; so as Judgment shall and may be thereupon had and given for the said *Francis Golding*, to recover the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, against the said *David Edwards*, and for him to recover in Value against the said *Abraham Barker*, and *Cecilia* his Wife, and *John Barker*, and for them to recover in Value against the said common Vouchee, and that Execution shall and may be thereupon awarded and had accordingly, and all and every other Act and Thing be done and executed, needful and requisite for the Suffering and Perfecting of such common Recovery or Recoveries, with Vouchers as aforesaid. And it is hereby further declared and agreed to enure by and between all the said Parties to these Presents, that immediately from and after the Suffering and Perfecting

in order to make
a Tenant to the
Præcipe,

that a Recovery
may be suffered;

of

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of the said Recovery or Recoveries, so as aforesaid, or in any other manner, or at any other time or times, suffered or to be suffered, as well these Presents and the Assurance hereby made, and the said Fine or Fines so covenanted to be levied as aforesaid, as also the said Recovery or Recoveries, and also all and every other Fine and Fines, Recovery and Recoveries, Conveyances, and Assurances in the Law whatsoever heretofore had, made, levied, suffered, or executed, or hereafter to be had, made, levied, suffered, or executed, of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, or any of them, or any Part thereof, by and between the said Parties to these Presents or any of them, or whereunto they or any of them are or shall be Parties or Privies, shall be and enure, and shall be adjudged, deemed, construed, and taken, and so are and were meant and intended, to be and enure, and the Recoveror or Recoverors in the said Recovery or Recoveries named or to be named, and his or their Heirs, shall stand and be seised of the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, and of every Part and Parcel thereof, to the Uses, upon the Trusts, and to and for the Intents and Purposes, and under and subject to the Provisoos, Limitations, and Agreements, herein before mentioned, expressed, and declared, of and concerning the same. **And** the said *Abraham Barker*, Party hereunto, doth hereby for himself, his Heirs, Executors, and Administrators, further covenant, promise, grant, and agree, to and with the said *David Edwards* and *Francis Golding*, their Heirs, Executors, and Administrators, in manner and form following; that is to say, that the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, shall and may at all times hereafter remain, continue, and be, to and for the Uses and Purposes, upon the Trusts, and under and subject to the Provisoos, Limitations, and Agreements, hereinbefore mentioned, expressed, and declared, of and concerning the same; and shall and may be peaceably and quietly had, held, and enjoyed accordingly, without any lawful Let or Interruption of or by the said *Abraham Barker* or *Cecilia* his Wife, Parties hereunto, his or her Heirs or Assigns, or of or by any other Person or Persons lawfully claiming or to claim from, by, or under, or in Trust for him, her, them, or any of them, or from, by, or under his or her Ancestors, or any of them; and shall

to the preceding Uses in this Deed.

Other Covenants;

for quiet Enjoyment,

free from Incumbrances;

so

so remain, continue, and be, free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said *Abraham Barker*, or *Cecilia* his Wife, Parties hereunto, his or her Heirs, Executors, or Administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all former and other Gifts, Grants, Bargains, Sales, Leases, Mortgages, Estates, Titles, Troubles, Charges, and Incumbrances whatsoever, had, made, done, committed, occasioned, or suffered, or to be had, made, done, committed, occasioned, or suffered, by the said *Abraham Barker*, or *Cecilia* his Wife, or by his or her Ancestors, or any of them, or by his, her, their, or any of their Act, Means, Assent, Consent, and Procurement: **And moreover** that he the said *Abraham Barker*, and *Cecilia* his Wife, Parties hereunto, and his and her Heirs, and all other Persons having or lawfully claiming, or which shall or may have or lawfully claim, any Estate, Right, Title, Trust, or Interest, at Law or in Equity, of, in, to, or out of, the said capital Messuage, Lands, Tenements, Hereditaments, and Premises, or any of them, or any Part thereof, by or under or in Trust for him, her, them, or any of them, or by or under his or her Ancestors or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable Request, and at the Costs and Charges, of the said *David Edwards* and *Francis Golding*, or either of them, their or either of their Heirs, Executors, or Administrators, make, do, and execute, or cause to be made, done, and executed, all such further and other lawful and reasonable Acts, Deeds, Conveyances, and Assurances in the Law whatsoever, for the further, better, more perfect, and absolute Granting, Conveying, Settling, and Assuring of the same capital Messuage, Lands, Tenements, Hereditaments, and Premises, to and for the Uses and Purposes, upon the Trusts, and under and subject to the Provisoos, Limitations, and Agreements, herein before mentioned, expressed, and declared, of and concerning the same, as by the said *David Edwards* and *Francis Golding* or either of them, their or either of their Heirs, Executors, or Administrators, or their or any of their Counsel learned in the Law shall be reasonably advised, devised, or required: So as such further Assurances contain in them no further or other Warranty or Covenants than against the Person or Persons,

his

and for further Assurance.

No. IV.

Power of Revocation.

Conclusion.

his, her, or their Heirs, who shall make or do the same; and so as the Party or Parties, who shall be requested to make such further Assurances, be not compelled or compellable, for making or doing thereof, to go and travel above five Miles from his, her, or their then respective Dwellings, or Places of Abode. **Provided lastly**, and it is hereby further declared and agreed by and between all the Parties to these Presents, that it shall and may be lawful to and for the said *Abraham Barker* and *Cecilia* his Wife, *John Barker* and *Katherine* his intended Wife, and *David Edwards*, at any time or times hereafter, during their joint Lives, by any Writing or Writings under their respective Hands and Seals and attested by two or more credible Witnesses, to revoke, alter, make void, or change all and every or any the Use and Uses, Estate and Estates, herein and hereby before limited and declared, or mentioned or intended to be limited and declared, of and in the capital Messuage, Lands, Tenements, Hereditaments, and Premises aforesaid, or of and in any Part or Parcel thereof, any thing herein contained to the contrary thereof in any wise notwithstanding. **In Witness whereof** the Parties to these Presents their Hands and Seals have subscribed and set, the Day and Year first above written.

Sealed, and delivered, being
first duly stamped, in the
presence of
George Carter.
William Browne.

Abraham Barker. (L. S.)
Cecilia Barker. (L. S.)
David Edwards. (L. S.)
Francis Golding. (L. S.)
Charles Browne. (L. S.)
Richard More. (L. S.)
John Barker. (L. S.)
Katherine Edwards. (L. S.)

No. V.

No. V.

*An OBLIGATION, or BOND, with CONDITION
for the Payment of Money.*

Now all Men by these Presents that I *David Edwards*, of *Lincoln's Inn* in the County of *Middlesex*, Esquire, am held and firmly bound to *Abraham Barker* of *Dale-Hall* in the County of *Norfolk*, Esquire, in ten thousand Pounds of lawful Money of *Great Britain*, to be paid to the said *Abraham Barker*, or his certain Attorney, Executors, Administrators, or Assigns; for which Payment well and truly to be made, I bind myself, my Heirs, Executors, and Administrators, firmly by these Presents, sealed with my Seal. Dated the fourth Day of *September* in the twenty first Year of the Reign of our sovereign Lord *GEORGE* the second by the Grace of God King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and forty seven.

The Condition of this Obligation is such, that if the above bounden *David Edwards*, his Heirs, Executors, or Administrators, do and shall well and truly pay, or cause to be paid, unto the above named *Abraham Barker*, his Executors, Administrators, or Assigns, the full Sum of five thousand Pounds of lawful *British* Money, with lawful Interest for the same, on the fourth Day of *March* next ensuing the Date of the above written Obligation, then this Obligation shall be void and of none Effect, or else shall be and remain in full Force and Virtue.

Sealed, and delivered, being *David Edwards*. (L. S.)
first duly stamped, in the
presence of
George Carter.
William Browne.

No. VI.

No. VI.

*A FINE of Lands, sur Cognizance de Droit,
come ceo, &c.*

§. 1. *Writ of Covenant; or, PRAECIPE.*

G E O R G E the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Norfolk*, Greeting. **Command** *Abraham Barker*, Esquire, and *Cecilia* his Wife, and *John Barker*, Esquire, that justly and without delay they perform to *David Edwards*, Esquire, the Covenant made between them of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*; and unless they shall so do, and if the said *David* shall give you Security of prosecuting his Claim, then summon by good Summoners the said *Abraham*, *Cecilia*, and *John*, that they appear before our Justices, at *Westminster*, from the Day of Saint *Michael* in one Month, to shew wherefore they have not done it: And have you there the Summoners, and this Writ. **Witness** Ourself at *Westminster*, the ninth Day of *October*, in the twenty first Year of our Reign.

Sheriff's Return.	Pledges of Prosecu- tion,	{	John Doe.	Summoners of the within named A- braham, Cecilia, and John,	{	John Den.
			Richard Roe.			Richard Fen.

§. 2. *The Licence to agree.*

Norfolk, } **David Edwards**, Esquire, gives to the
to wit. } Lord the King ten Marks, for Licence to
agree with *Abraham Barker*, Esquire, and *Cecilia* his
Wife, and *John Barker*, Esquire, of a Plea of Covenant
of two Messuages, two Gardens, three hundred Acres of
Land,

Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*.

§. 3. *The Concord.*

And the Agreement is such, to wit, that the aforesaid *Abraham*, *Cecilia*, and *John*, have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David*, as those which the said *David* hath of the Gift of the aforesaid *Abraham*, *Cecilia*, and *John*; and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham*, *Cecilia*, and *John*, have granted, for themselves and their Heirs, that they will warrant to the aforesaid *David*, and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit-Claim, Warranty, Fine, and Agreement, the said *David* hath given to the said *Abraham*, *Cecilia*, and *John*, two hundred Pounds sterling.

§. 4. *The Note, or Abstract.*

Norfolk, } Between *David Edwards*, Esquire, Com-
to wit, } plainant, and *Abraham Barker*, Esquire, and
Cecilia his Wife, and *John Barker*, Esquire, Deforciant,
of two Messuages, two Gardens, three hundred Acres of
Land, one hundred Acres of Meadow, two hundred
Acres of Pasture, and fifty Acres of Wood, with the
Appurtenances, in *Dale*, whereupon a Plea of Covenant
was summoned between them; to wit, that the said *Abraham*, *Cecilia*, and *John*, have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David*, as those which the said *David* hath of the Gift of the aforesaid *Abraham*, *Cecilia*, and *John*; and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham*, *Cecilia*, and *John*, have granted for themselves, and their Heirs, that they will warrant to the aforesaid *David*, and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit-Claim, Warranty, Fine, and Agreement,
the

No. VI.

the said *David* hath given to the said *Abraham*, *Cecilia*, and *John*, two hundred Pounds sterling.

§. 5. *The Foot, Chirograph, or Indentures, of the FINE.*

Norfolk, } **This is the final Agreement**, made in
to wit, } the Court of the Lord the King at *Westminster*, from the Day of Saint *Michael* in one Month, in the twenty first Year of the Reign of the Lord *GEORGE* the second by the Grace of God of *Great Britain*, *France*, and *Ireland* King, Defender of the Faith, and so forth, before *John Willes*, *Thomas Abney*, *Thomas Burnet*, and *Thomas Birch*, Justices, and other faithful Subjects of the Lord the King then there present, between *David Edwards*, Esquire, Complainant, and *Abraham Barker*, Esquire, and *Cecilia* his Wife, and *John Barker*, Esquire, Deforciant, of two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, whereupon a Plea of Covenant was summoned between them in the same Court; to wit, that the aforesaid *Abraham*, *Cecilia*, and *John*, have acknowledged the aforesaid Tenements, with the Appurtenances, to be the Right of him the said *David*, as those which the said *David* hath of the Gift of the aforesaid *Abraham*, *Cecilia*, and *John*; and those they have remised and quitted Claim, from them and their Heirs, to the aforesaid *David* and his Heirs for ever. And further, the same *Abraham*, *Cecilia*, and *John*, have granted, for themselves and their Heirs, that they will warrant to the aforesaid *David* and his Heirs, the aforesaid Tenements, with the Appurtenances, against all Men for ever. And for this Recognition, Remise, Quit-Claim, Warranty, Fine, and Agreement, the said *David* hath given to the said *Abraham*, *Cecilia*, and *John*, two hundred Pounds sterling.

§. 6. *Proclamations, endorsed upon the FINE, according to the Statutes.*

The first Proclamation was made the sixteenth Day of *November*, in the Term of Saint *Michael*, in the twenty first Year of the King withinwritten.

The

The second Proclamation was made the fourth Day of *February*, in the Term of Saint *Hilary*, in the twenty first Year of the King withinwritten.

No. VII.

The third Proclamation was made the thirteenth Day of *May*, in the Term of *Easter*, in the twenty first Year of the King withinwritten.

The fourth Proclamation was made the twenty eighth Day of *June*, in the Term of the holy *Trinity*, in the twenty second Year of the King withinwritten.

No. VII.

*A common RECOVERY of Lands, with * double Voucher.*

§. 1. *Writ of Entry sur Disseisin in the Post; or*
PRAECIPE.

G E O R G E the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Norfolk*, Greeting. **Command** *David Edwards*, Esquire, that justly and without delay he render to *Francis Golding*, Clerk, two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, which he claims to be his Right and Inheritance, and into which the said *David* hath not Entry, unless after the Disseisin, which *Hugh Hunt* thereof unjustly, and without Judgment, hath made to the aforesaid *Francis*, within thirty Years now last past, as he saith, and whereupon he complains that the aforesaid *David* deforceth him. And unless he shall so do, and if the said *Francis* shall give you Security of prosecuting his Claim, then summon by good Summoners the said *David*, that he appear before our Justices at *Westminster*,

* Note, that if the Recovery be had with single Voucher, the Parts marked "thus" in §. 2. are omitted.

on

No. VII.

on the Octave of Saint *Martin*, to shew wherefore he hath not done it: And have you there the Summoners, and this Writ. **Witness** Ourself at *Westminster*, the twenty ninth Day of *October*, in the twenty first Year of our Reign.

Sheriff's Return.	Pledges of Prosecution,	$\left\{ \begin{array}{l} \textit{John Doe.} \\ \textit{Richard Roe.} \end{array} \right.$	Summoners of the within- named <i>David</i> ,	$\left\{ \begin{array}{l} \textit{John Den.} \\ \textit{Richard Fen.} \end{array} \right.$
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§. 2. Exemplification of the RECOVERY Roll.

Demand against
the Tenant.

Count.

Esplees.

Defence of the
Tenant.

GEORGE the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to all to whom these our present Letters shall come, Greeting. **Know ye**, that among the Pleas of Land, enrolled at *Westminster*, before Sir *John Willes*, Knight, and his Fellows, our Justices of the Bench, of the Term of Saint *Michael*, in the twenty first Year of our Reign, upon the fifty second Roll it is thus contained. **Notfolk**, to wit: *Francis Golding*, Clerk, in his proper Person demandeth against *David Edwards*, Esquire, two Messuages, two Gardens, three hundred Acres of Land, one hundred Acres of Meadow, two hundred Acres of Pasture, and fifty Acres of Wood, with the Appurtenances, in *Dale*, as his Right and Inheritance, and into which the said *David* hath not Entry, unless after the Disseisin, which *Hugh Hunt* thereof unjustly, and without Judgment, hath made to the aforesaid *Francis*, within thirty Years now last past. And whereupon he saith, that he himself was seised of the Tenements aforesaid, with the Appurtenances, in his Demesne as of Fee and Right, in Time of Peace, in the Time of the Lord the King that now is, by taking the Profits thereof to the Value [* of six Shillings and eight Pence, and more, in Rents, Corn, and Grass:] And into which [the said *David* hath not Entry, unless as aforesaid:] And thereupon he bringeth Suit, [and good Proof.] And the said *David* in his proper Person comes and defendeth his Right,

* The Clauses, between Hooks, in this and the subsequent Numbers of the Appendix, are no otherwise expressed in the Records than by an &c. Which Abbreviation frequently rendering them obscure, especially to Beginners, the full Reading is here endeavoured to be given, partly from Conjecture, and partly from antient Authorities.

when

when [and where the Court shall award,] and thereupon voucheth to Warranty "*Abraham Barker*, Esquire, and "*Cecilia* his Wife, and "*John Barker*, Esquire; who are Voucher. No. VII.
 "present here in Court in their proper Persons, and the "Warranty.
 "Tenements aforesaid with the Appurtenances to him
 "freely warrant, [and pray that the said *Francis* may
 "count against them.] And hereupon the said *Francis* de- "Demand against
 "mandeth against the said *Abraham*, *Cecilia*, and *John*, "the Vouches.
 "Tenants by their own Warranty, the Tenements afore-
 "said with the Appurtenances, in Form aforesaid, &c.
 "And whereupon he saith, that he himself was seised of "Count.
 "the Tenements aforesaid, with the Appurtenances, in his
 "Demefne as of Fee and Right, in Time of Peace, in the
 "Time of the Lord the King that now is, by taking the
 "Profits thereof to the Value, &c. And into which, &c.
 "And thereupon he bringeth Suit, &c. And the afore- "Defence of the
 "said *Abraham*, *Cecilia*, and *John*, Tenants by their own "Vouches.
 "Warranty, defend their Right, when, &c. and thereupon "Second Voucher.
 "they further vouch to Warranty" *Jacob Morland*; who
 is present here in Court in his proper Person, and the Warranty.
 Tenements aforesaid, with the Appurtenances, to them
 freely warranteth, &c. And hereupon the said *Francis* Demand against
 demandeth against the said *Jacob*, Tenant by his own the common
 Warranty, the Tenements aforesaid, with the Appurten- Vouches.
 nances, in Form aforesaid, &c. And whereupon he Count.
 saith, that he himself was seised of the Tenements afore-
 said, with the Appurtenances, in his Demefne as of Fee
 and Right, in Time of Peace, in the Time of the Lord
 the King that now is, by taking the Profits thereof to the
 Value, &c. And into which, &c. And thereupon he
 bringeth Suit, &c. And the aforesaid *Jacob*, Tenant by Defence of the
 his own Warranty, defends his Right, when, &c. And common Vouches.
 saith that the aforesaid *Hugh* did not disseise the aforesaid Plea, Nul Disseisin.
Francis of the Tenements aforesaid, as the aforesaid *Francis*
 by his Writ and Count aforesaid above doth suppose:
 And of this he puts himself upon the Country. And the Imparlance.
 aforesaid *Francis* thereupon craveth Leave to imparl; and
 he hath it. And afterwards the aforesaid *Francis* cometh
 again here into Court in this same Term in his proper
 Person, and the aforesaid *Jacob*, though solemnly called, Default of the
 cometh not again, but hath departed in Contempt of the common Vouches.
 Court, and maketh Default. Therefore it is consider- Judgment for the
 ed, that the aforesaid *Francis* do recover his Seisin against Demandant.
 the aforesaid *David* of the Tenements aforesaid, with the

Ap-

No. VII.
 Recovery in Value.
 Amercement.
 Award of the Writ of Seisin, and Return.
 Exemplification continued.
 Teste.

Appurtenances; And that the said *David* have of the Land of the aforesaid "*Abraham, Cecilia, and John*, to "the Value [of the Tenements aforesaid;] And further, "that the said *Abraham, Cecilia, and John*, have of the "Land of the said" *Jacob* to the Value [of the Tenements aforesaid.] And the said *Jacob* in Mercy. And hereupon the said *Francis* prays a Writ of the Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have full Seisin of the Tenements aforesaid with the Appurtenances: And it is granted unto him, returnable here without delay. Afterwards, that is to say, the twenty eighth Day of *November* in this same Term, here cometh the said *Francis* in his proper Person; and the Sheriff, namely *Sir Charles Thompson*, Knight, now sendeth, that he by virtue of the Writ aforesaid to him directed, on the twenty fourth Day of the same Month, did cause the said *Francis* to have full Seisin of the Tenements aforesaid with the Appurtenances, as he was commanded **All and Singular** which Premises, at the Request of the said *Francis*, by the Tenor of these Presents we have held good to be exemplified. In Testimony whereof we have caused our Seal, appointed for sealing Writs in the Bench aforesaid, to be affixed to these Presents: **Witness** *Sir John Willes*, Knight, at *Westminster*, the twenty eighth Day of *November*, in the twenty first Year of our Reign.

Cooke.

No. VIII.

No. VIII.

Proceedings on an Action of Trespass in EJECTMENT, by Original, in the King's Bench.

§. 1. *The Original Writ.*

G E O R G E the second by the Grace of God of *Si fecerit te secu-*
Great Britain, France, and Ireland King, Defen-
rum.
 der of the Faith, and so forth; to the Sheriff of *Berk-*
shire, Greeting. **I**f *Richard Smith* shall give you Secu-
 rity of prosecuting his Claim, then put by Gage and safe
 Pledges *William Stiles*, late of *Newbury*, Gentleman, so
 that he be before Us on the Morrow of *All-Souls*, where-
 soever We shall then be in *England*, to shew wherefore
 with Force and Arms he entered into one Messuage, with
 the Appurtenances, in *Sutton*, which *John Rogers*, Esquire,
 hath demised to the aforesaid *Richard*, for a Term which
 is not yet expired, and ejected him from his said Farm,
 and other Enormities to him did, to the great Damage of
 the said *Richard*, and against our Peace. And have you
 there the Names of the Pledges, and this Writ. **Witnesh**
 Ourself at *Westminster*, the twelfth Day of *October*, in
 the twenty ninth Year of our Reign.

Pledges of Prosecution, { *John Doe.*
 { *Richard Roe.*

Sheriff's Return.

The within named *William Stiles* { *John Den.*
 is attached by Pledges, { *Richard Fen.*

§. 2. *Copy of the Declaration against the casual Ejector;
 who gives Notice thereupon to the Tenant in Possession.*

Michaelmas, the 29th of King *George* the second.

Berks } *William Stiles*, late of *Newbury* in the said Declaration,
 to wit. } *County*, Gentleman, was attached to answer to
Richard Smith, of a Plea, wherefore with Force and Arms
 he entered into one Messuage, with the Appurtenances, in
Sutton in the County aforesaid, which *John Rogers* Esquire
 L demised

No. VIII. demised to the said *Richard Smith* for a Term which is not yet expired, and ejected him from his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the Lord the King, &c. And whereupon the said *Richard* by *Robert Martin* his Attorney complains, that whereas the said *John Rogers* on the first Day of *October* in the twenty ninth Year of the Reign of the Lord the King that now is, at *Sutton* aforesaid, had demised to the same *Richard* the Tenement aforesaid, with the Appurtenances, to have and to hold the said Tenement, with the Appurtenances, to the said *Richard* and his Assigns, from the Feast of Saint *Michael* the Archangel then last past, to the End and Term of five Years from thence next following and fully to be complete and ended, by virtue of which Demise the said *Richard* entered into the said Tenement, with the Appurtenances, and was thereof possessed; and, the said *Richard* being so possessed thereof, the said *William* afterwards, that is to say, on the said first Day of *October* in the said twenty ninth Year, with Force and Arms, that is to say, with Swords, Staves, and Knives, entered into the said Tenement, with the Appurtenances, which the said *John Rogers* demised to the said *Richard* in Form aforesaid for the Term aforesaid which is not yet expired, and ejected the said *Richard* out of his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the said Lord the King; whereby the said *Richard* saith that he is injured and damaged to the Value of twenty Pounds; And thereupon he brings Suit, &c.

<i>Martin</i> , for the Plaintiff.	}	Pledges of	{	<i>John Doe.</i>
<i>Peters</i> , for the Defendant.				Prosecution,

Mr *George Saunders*;

Notice.

I am informed that you are in Possession of, or claim Title to, the Premises mentioned in this Declaration of Ejectment, or to some Part thereof; and I, being sued in this Action as a casual Ejector, and having no Claim or Title to the same, do advise you to appear next *Hilary* Term in his Majesty's Court of *King's Bench* at *Westminster*, by some Attorney of that Court, and then and there, by a Rule to be made of the same Court, to cause yourself to be made Defendant in my Stead; otherwise I shall suffer

suffer Judgment to be entered against me, and you will be turned out of Possession.

No.VIII.

Your loving Friend,

5 January, 1756.

William Stiles.

§. 3. *The Rule of Court.*

Hilary Term, in the twenty ninth Year of King
GEORGE the second.

Berks, } It is ordered by the Court, by the Assent *Smith against Stiles;*
to wit. } of both Parties, and their Attorneys, that for one Messuage,
George Saunders, Gentleman, may be made Defendant, with the Appurte-
in the place of the now Defendant *William Stiles,* and nances, in *Sutton,*
shall immediately appear to the Plaintiff's Action, and on the Demise of
shall receive a Declaration in a Plea of 'Trespafs and E- *John Rogers.*
jectment of the Tenements in question, and shall imme-
diately plead thereto, Not Guilty: And, upon the Trial
of the Issue, shall confess Lease, Entry, and Ouster, and
insist upon his Title only. And if, upon Trial of the
Issue, the said *George* do not confess Lease, Entry, and
Ouster, and by reason thereof the Plaintiff cannot prose-
cute his Writ, then the Taxation of Costs upon such *Non-*
prof. shall cease, and the said *George* shall pay such Costs
to the Plaintiff, as by the Court of our Lord the King
here shall be taxed and adjudged for such his Default in
Nonperformance of this Rule; and Judgment shall be
entered against the said *William Stiles,* now the casual E-
jector, by Default. And it is further ordered, that, if
upon the Trial of the said Issue a Verdict shall be given
for the Defendant, or if the Plaintiff shall not prosecute his
Writ, upon any other Cause, than for the not confessing
Lease, Entry, and Ouster as aforesaid, then the Lessor of
the Plaintiff shall pay Costs, if the Plaintiff himself doth
not pay them.

By the Court.

Martin, for the Plaintiff.

Newman, for the Defendant.

No. VIII.

§. 4. *The Record.*

Pleas before the Lord the King at *Westminster*, of the Term of Saint *Hilary*, in the twenty ninth Year of the Reign of the Lord **GEORGE** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, &c.

Writ.

Berks, } **George Saunders**, late of *Sutton* in the County afore-
to wit. } ty afore-**said**, Gentleman, was attached to
answer *Richard Smith*, of a Plea, wherefore with Force and Arms he entered into one Messuage, with the Appurtenances, in *Sutton*, which *John Rogers*, Esquire, hath demised to the said *Richard* for a Term which is not yet expired, and ejected him from his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the Lord the King that now is. **And whereupon** the said *Richard* by *Robert Martin* his Attorney complains, that whereas the said *John Rogers* on the first Day of *October* in the twenty ninth Year of the Reign of the Lord the King that now is, at *Sutton* afore-**said**, had demised to the same *Richard* the Tenement afore-**said**, with the Appurtenances, to have and to hold the said Tenement, with the Appurtenances, to the said *Richard* and his Assigns, from the Feast of Saint *Michael* the Archangel then last past, to the End and Term of five Years from thence next following and fully to be complete and ended; by virtue of which Demise the said *Richard* entered into the said Tenement, with the Appurtenances, and was thereof possessed; and, the said *Richard* being so possessed thereof, the said *George* afterwards, that is to say, on the first Day of *October* in the said twenty ninth Year, with Force and Arms, that is to say, with Swords, Staves, and Knives, entered into the said Tenement, with the Appurtenances, which the said *John Rogers* demised to the said *Richard* in Form afore-**said** for the Term afore-**said** which is not yet expired, and ejected the said *Richard* out of his said Farm, and other Wrongs to him did, to the great Damage of the said *Richard*, and against the Peace of the said Lord the King; whereby the said *Richard* saith that he is injured and endamaged to the Value of twenty Pounds: And thereupon he brings Suit, [and good Proof.] **And** the afore-**said** *George Saunders*, by
Charles,

Declaration, or
Count,

Defence.

Charles Newman his Attorney, comes and defends the Force and Injury, when [and where the Court shall award;] and saith that he is in no wise guilty of the Trespas and Ejectment aforesaid, as the said *Richard* above complains against him; and thereof he puts himself upon the Country; and the said *Richard* doth likewise the same: **Therefore** let a Jury come thereupon before the Lord the King, on the Octave of the Purification of the Blessed Virgin *Mary*, wheresoever he shall then be in *England*; who neither [are of Kin to the said *Richard*, nor to the said *George*;] to recognize [whether the said *George* be guilty of the Trespas and Ejectment aforesaid:] Because as well [the said *George*, as the said *Richard*, between whom the Difference is, have put themselves on the said Jury.] The same Day is there given to the Parties aforesaid. **Afterwards** the Process therein, being continued between the said Parties of the Plea aforesaid by the Jury, is put between them in Respite, before the Lord the King, until the Day of *Easter* in fifteen Days, wheresoever the said Lord the King shall then be in *England*; unless the Justices of the Lord the King assigned to take Assises in the County aforesaid, shall have come before that time, to wit, on *Monday* the eighth of *March*, at *Reading* in the said County, by the form of the Statute [in that case provided,] by reason of the Default of the Jurors [summoned to appear as aforesaid.] At which Day before the Lord the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid; and the aforesaid Justices of Assise, before whom [the Jury aforesaid came,] sent here their Record before them had in these Words, to wit: **Afterwards**, at the Day and Place within contained, before *Heneage Legge*, Esquire, one of the Barons of the Exchequer of the Lord the King, and Sir *John Eardley Wilmot*, Knight, one of the Justices of the said Lord the King, assigned to hold Pleas before the King himself, Justices of the said Lord the King, assigned to take Assises in the County of *Berks* by the Form of the Statute [in that case provided,] come as well the within named *Richard Smith*, as the within written *George Saunders*, by their Attorneys within contained; and the Jurors of the Jury whereof Mention is within made being called, certain of them, to wit, *Charles Holloway*, *John Hooke*, *Peter Graham*, *Henry Cox*, *William Brown*, and *Francis Oakley*, come, and are sworn upon that Jury: And because the Rest of the Jurors

No. VIII.

Plea, Not Guilty.

Issue.

Venire awarded.

Respite, for Default of Jurors.

Nisi Prius.

Pecca.

of

No. VIII.

*Tales de Circum-
stantiis.*

Verdict, for the
Plaintiff.

Motion in Arrest
of Judgment.

Continuance.

of the same Jury did not appear, therefore others of the Bystanders being chosen by the Sheriff, at the Request of the said *Richard Smith*, and by the Command of the Justices aforesaid, are appointed a-new, whose Names are affixed to the Panel within written, according to the Form of the Statute in such Case made and provided; which said Jurors so appointed a-new, to wit, *Roger Bacon, Thomas Small, Charles Pye, Edward Hawkins, Samuel Roberts, and Daniel Parker*, being likewise called, come; and, together with the other Jurors aforesaid before impanelled and sworn, being elected, tried, and sworn, to speak the Truth of the Matter within contained, upon their Oath say, that the aforesaid *George Saunders* is guilty of the Trespass and Ejectment within written, in Manner and Form as the aforesaid *Richard Smith* within complains against him; and assess the Damages of the said *Richard Smith*, on Occasion of that Trespass and Ejectment, besides his Costs and Charges by him put unto about his Suit in that Behalf, to twelve Pence; and, for those Costs and Charges, to forty Shillings. **Whereupon** the said *Richard Smith*, by his Attorney aforesaid, prayeth Judgment against the said *George Saunders*, in and upon the Verdict aforesaid by the Jurors aforesaid given in the Form aforesaid: And the said *George Saunders*, by his Attorney aforesaid, saith that the Court here ought not to proceed to give Judgment upon the said Verdict, and prayeth that Judgment against him the said *George Saunders*, in and upon the Verdict aforesaid by the Jurors aforesaid given in the Form aforesaid, may be stayed, by reason that the said Verdict is insufficient and erroneous, and that the same Verdict may be quashed, and that the Issue aforesaid may be tried a-new by other Jurors to be afresh impanelled. And, because the Court of the Lord the King here is not yet advised of giving their Judgment of and upon the Premises, therefore Day thereof is given as well to the said *Richard Smith* as the said *George Saunders*, before the Lord the King, until the Morrow of the *Ascension* of our Lord, wheresoever the said Lord the King shall then be in *England*, to hear their Judgment of and upon the Premises, for that the Court of the Lord the King is not yet advised thereof. At which Day before the Lord the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid: Upon which, the Record and Matters aforesaid having been seen, and by the Court of the Lord the King now here fully understood,
and

and all and singular the Premises having been examined, and mature Deliberation being had thereupon, for that it seems to the Court of the Lord the King now here that the Verdict aforesaid is in no wise insufficient or erroneous, and that the same ought not to be quashed, and that no new Trial ought to be had of the Issue aforesaid, **Therefore it is considered,** that the said *Richard* do recover against the said *George* his Term yet to come, of and in the said Tenements, with the Appurtenances, and the said Damages assessed by the said Jury in Form aforesaid, and also twenty seven Pounds six Shillings and eight Pence for his Costs and Charges aforesaid, by the Court of the Lord the King here awarded to the said *Richard*, with his Assent, by way of Increase; which said Damages in the Whole amount to twenty nine Pounds, seven Shillings, and eight Pence. And let the said *George* be taken, [until he maketh Fine to the Lord the King.] **And hereupon** the said *Richard* by his Attorney aforesaid prayeth a Writ of the Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have Possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances: And it is granted unto him, returnable before the Lord the King on the Morrow of the *Holy Trinity*, wheresoever he shall then be in *England*. At which Day before the Lord the King, at *Westminster*, cometh the said *Richard* by his Attorney aforesaid; and the Sheriff, that is to say, *Sir Thomas Reeve*, Knight, now sendeth, that he by virtue of the Writ aforesaid to him directed, on the ninth Day of *June* last past, did cause the said *Richard* to have his Possession of his Term aforesaid yet to come, of and in the Tenements aforesaid, with the Appurtenances, as he was commanded.

No. VIII.

Opinion of the Court.

Judgment for the Plaintiff.

Costs.

Capiatur pro Fine.

Writ of Possession.

fion,

and Return.

No. IX.

No. IX.

No. IX.

*Proceedings on an Action of DEBT, in the Court of
common Pleas; removed into the King's
Bench by Writ of ERROR.*

§. 1. *Original.**Præcipe.*

GEORGE the second by the Grace of God of
Great Britain, France, and Ireland King, Defen-
der of the Faith, and so forth; to the Sheriff of Oxford-
shire, Greeting. Command Charles Long, late of Bur-
ford, Gentleman, that justly and without delay he render
to William Burton two hundred Pounds, which he owes
him and unjustly detains, as he saith. And unless he shall
so do, and if the said William shall make you secure of
prosecuting his Claim, then summon by good Summoners
the aforesaid Charles, that he be before our Justices at
Westminster, on the Octave of Saint Hilary, to shew
wherefore he hath not done it. And have you there then
the Summoners, and this Writ. Witness Ourself at West-
minster, the twenty fourth Day of December, in the twenty
eight Year of our Reign.

Sheriff's Return.	Pledges of Prosecu- tion,	{	<i>John Doe.</i> <i>Richard Roe.</i>	Summoners of the within- named <i>Charles</i> <i>Long.</i>	{	<i>Roger Morris.</i> <i>Henry Johnson.</i>

§. 2. *Process.**Attachment.**Pone.*

GEORGE the second by the Grace of God of
Great Britain, France, and Ireland King, Defender of
the Faith, and so forth; to the Sheriff of Oxfordshire,
Greeting. Put by Gage and safe Pledges Charles Long,
late of Burford, Gentleman, that he be before our Justices
at Westminster on the Octave of the Purification of the
blessed Mary, to answer to William Burton of a Plea, that
he render to him two hundred Pounds, which he owes
him and unjustly detains, as he saith; And to shew where-
fore

fore he was not before our Justices at *Westminster* on the Octave of Saint *Hilary*, as he was summoned. And have there then the Names of the Pledges and this Writ. **Witness** Sir *John Willes*, Knight, at *Westminster*, the twenty third Day of *January* in the twenty eighth Year of our Reign.

No IX.

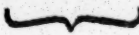
The within named *Charles Long* is { *Edward Leigh*.
attached by Pledges, { *Robert Tanner*.

Sheriff's Return.

GEORGE the second by the Grace of God of *Distingas*.
Great Britain, France, and Ireland King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. **We** command you that you distrein *Charles Long*, late of *Burford*, Gentleman, by all his Lands and Chattels within your Bailiwick, so that neither he nor any one through him may lay hands on the same, until you shall receive from Us another Command thereupon; and that you answer to Us of the Issues of the same; and that you have his Body before our Justices at *Westminster* from the Day of *Easter* in fifteen Days, to answer to *William Burton* of a Plea, that he render to him two hundred Pounds which he owes him and unjustly detains, as he saith, and to hear his Judgment of his many Defaults. And have you there then this Writ. **Witness** Sir *John Willes*, Knight, at *Westminster*, the twelfth day of *February* in the twenty eighth Year of our Reign.

The within-named *Charles Long* hath nothing in my Sheriff's Return;
Bailiwick, whereby he may be distreined. *Nihil.*

GEORGE the second by the Grace of God of *Capias ad respondendum*.
Great Britain, France, and Ireland King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. **We** command you, that you take *Charles Long* late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, from the Day of *Easter* in five Weeks, to answer to *William Burton*, Gentleman, of a Plea, that he render to him two hundred Pounds, which he owes him and unjustly detains, as he saith: And whereupon you have returned to our Justices at *Westminster* that the said *Charles* hath nothing in your Bailiwick, whereby he may be distreined. And have you

No. IX.  you there then this Writ. **Witness** Sir *John Willes*, Knight, at *Westminster*, the sixteenth Day of *April*, in the twenty eighth Year of our Reign.

Sheriff's Return; The withinnamed *Charles Long* is not found in my
Non est inventus. Bailiwick.

Testatum Capias. **GEORGE** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to the Sheriff of *Berkshire*, Greeting. **We** command you, that you take *Charles Long*, late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before our Justices at *Westminster*, on the Morrow of the holy *Trinity*, to answer to *William Burton*, Gentleman, of a Plea, that he render to him two hundred Pounds, which he owes him and unjustly detains, as he saith: And whereupon our Sheriff of *Oxfordshire* hath made a Return to our Justices at *Westminster*, at a certain Day now past, that the aforesaid *Charles* is not found in his Bailiwick; and thereupon it is testified in our said Court, that the aforesaid *Charles* lurks, wanders, and runs about in your County. And have you there then this Writ. **Witness** Sir *John Willes*, Knight, at *Westminster*, the seventh Day of *May*, in the twenty eighth Year of our Reign.

Sheriff's Return; By Virtue of this Writ to me directed, I have taken
Cepi Corpus. the Body of the withinnamed *Charles Long*; which I have ready at the Day and Place withincontained, according as by this Writ it is commanded me.

“Or, upon the Return of *Non est inventus* upon the first
 “*Capias*, the Plaintiff may sue out an Alias and a
 “Pluries, and thence proceed to Outlawry; thus:

“*Alias Capias.* “**GEORGE** the second by the Grace of God of
 “*Great Britain, France, and Ireland* King, Defender of
 “the Faith, and so forth; to the Sheriff of *Oxfordshire*,
 “Greeting. **We** command you, as formerly we com-
 “manded you, that you take *Charles Long*, late of *Bur-*
 “*ford*, Gentleman, if he may be found in your Bailiwick,
 “and him safely keep, so that you may have his Body
 “before our Justices at *Westminster*, on the Morrow of the
 “holy

“ holy *Trinity*, to answer to *William Burton*, Gentleman,
 “ of a *Plea*, that he render to him two hundred Pounds,
 “ which he owes him and unjustly detains, as he saith.
 “ And have you there then this Writ. *Witness* Sir *John*
 “ *Willes*, Knight, at *Westminster*, the seventh Day of *May*,
 “ in the twenty eighth Year of our Reign.

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“ The within-named *Charles Long* is not found in my “*Sheriff’s Return*;
 “ *Bailiwick*. “*Non est inventus*.

“ **GEORGE** the second by the Grace of God of “*Pluries Capias*.
 “ *Great Britain, France, and Ireland King*, Defender of
 “ the Faith, and so forth; to the Sheriff of *Oxfordshire*,
 “ Greeting. *We* command you, as we have more than
 “ once commanded you, that you take *Charles Long*, late
 “ of *Burford*, Gentleman, if he may be found in your
 “ *Bailiwick*, and him safely keep, so that you may have his
 “ Body before our Justices at *Westminster*, from the Day
 “ of the holy *Trinity* in three Weeks, to answer to *William*
 “ *Burton*, Gentleman, of a *Plea*, that he render to him
 “ two hundred Pounds, which he owes him and unjustly
 “ detains, as he saith. And have you there then this Writ.
 “ *Witness* Sir *John Willes*, Knight, at *Westminster*, the
 “ thirtieth Day of *May*, in the twenty eighth Year of our
 “ Reign.

“ The within-named *Charles Long* is not found in my “*Sheriff’s Return*;
 “ *Bailiwick*. “*Non est inventus*.

“ **GEORGE** the second by the Grace of God of “*Exigi facias*.
 “ *Great Britain, France, and Ireland King*, Defender of
 “ the Faith, and so forth; to the Sheriff of *Oxfordshire*,
 “ Greeting. *We* command you, that you cause *Charles*
 “ *Long*, late of *Burford*, Gentleman, to be required from
 “ County Court to County Court, until according to the
 “ Law and Custom of our Realm of *England* he be out-
 “ lawed, if he doth not appear. And if he doth appear,
 “ then take him and cause him to be safely kept, so that
 “ you may have his Body before our Justices at *Westmin-*
 “ *ster*, on the Morrow of *All Souls*, to answer to *William*
 “ *Burton*, Gentleman, of a *Plea*, that he render to him
 “ two hundred Pounds, which he owes him and unjustly
 “ detains, as he saith: And whereupon you have return-
 “ ed to our Justices at *Westminster*, from the Day of the
 “ holy

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- “ holy *Trinity* in three Weeks, that he is not found in your
 “ Bailiwick. And have you there then this Writ. **Wit-**
 “ **ness** Sir *John Willes*, Knight, at *Westminster*, the eigh-
 “ tenth Day of *June*, in the twenty eighth Year of our
 “ Reign.
- “ Sheriff’s Return; “ By Virtue of this Writ to me directed, at my Coun-
 “ *Primo exactus*: “ ty Court held at *Oxford* in the County of *Oxford*, on
 “ *Thursday* the twenty sixth Day of *June* in the twenty
 “ ninth Year of the Reign of the Lord the King within
 “ written, the within-named *Charles Long* was required the
 “ *Secundo exactus*: “ first time, and did not appear: And at my County Court
 “ held at *Oxford* aforesaid, on *Thursday* the twenty fourth
 “ Day of *July* in the Year aforesaid, the said *Charles Long*
 “ *Tertio exactus*: “ was required the second time, and did not appear: And
 “ at my County Court held at *Oxford* aforesaid, on *Thurs-*
 “ *day* the twenty first Day of *August* in the Year aforesaid,
 “ the said *Charles Long* was required the third time, and
 “ *Quarto exactus*: “ did not appear: And at my County Court held at *Ox-*
 “ *ford* aforesaid, on *Thursday* the eighteenth Day of *Sep-*
 “ *tember* in the Year aforesaid, the said *Charles Long* was
 “ *Quinto exactus*: “ required the fourth time, and did not appear: And at
 “ my County Court held at *Oxford* aforesaid, on *Thursday*
 “ the sixteenth Day of *October* in the Year aforesaid, the
 “ said *Charles Long* was required the fifth time, and did
 “ *Idco Uilagatus*. “ not appear: Therefore the said *Charles Long*, by the
 “ Judgment of the Coroners of the said Lord the King, of
 “ the County aforesaid, according to the Law and Custom
 “ of the Kingdom of *England*, is outlawed.
- “ Writ of Procla- “ **GEORGE** the second by the Grace of God of
 “ mation. “ *Great Britain, France, and Ireland* King, Defender of
 “ the Faith, and so forth; to the Sheriff of *Oxfordshire*,
 “ Greeting. **Whereas** by our Writ We have lately com-
 “ manded You that you should cause *Charles Long*, late of
 “ *Burford*, Gentleman, to be required from County Court
 “ to County Court, until according to the Law and Cus-
 “ tom of our Realm of *England* he should be outlawed, if
 “ he did not appear: And if he did appear, then that you
 “ should take him and cause him to be safely kept, so that
 “ you might have his Body before our Justices at *Westmin-*
 “ *ster*, on the Morrow of *All-Souls*, to answer to *William*
 “ *Burton*, Gentleman, of a Plea, that he render to him
 “ two hundred Pounds, which he owes him and unjustly
 “ detains,

“detains, as he saith: **Therefore** we command you,
 “by virtue of the Statute in the thirty first Year of the
 “Lady *Elizabeth* late Queen of *England* made and provi-
 “ded, that you cause the said *Charles Long* to be proclaim-
 “ed upon three several Days according to the form of that
 “Statute; (whereof one Proclamation shall be made at or
 “near the most usual Door of the Church of the Parish
 “wherein he inhabits) that he render himself unto you;
 “so that you may have his Body before our Justices at
 “*Westminster* at the Day aforesaid, to answer the said *Wil-*
 “*liam Burton* of the Plea aforesaid. And have you there
 “then this Writ. **Witness** Sir *John Willes*, Knight, at
 “*Westminster*, the eighteenth Day of *June*, in the twenty
 “eighth Year of our Reign.

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“By Virtue of this Writ to me directed, at my County “*Sheriff’s Return;*
 “Court held at *Oxford* in the County of *Oxford*, on “*Proclamari feci.*
 “*Thursday* the twenty sixth Day of *June* in the twenty
 “ninth Year of the Reign of the Lord the King within
 “written, I caused to be proclaimed the first time; And
 “at the general Quarter Sessions of the Peace, held at *Ox-*
 “*ford* aforesaid on *Tuesday* the fifteenth Day of *July* in the
 “Year aforesaid, I caused to be proclaimed the second
 “time; And at the most usual Door of the Church of
 “*Burford* withinwritten on *Sunday* the third Day of *Au-*
 “*gust* in the Year aforesaid, immediately after divine Ser-
 “vice, one month at the least before the within-named
 “*Charles Long* was required the fifth time, I caused to be
 “proclaimed the third time, that the said *Charles Long*
 “should render himself unto me, as within it is command-
 “ed me.

“**GEORGE** the second by the Grace of God of “*Capias Utlagatum.*
 “*Great Britain, France, and Ireland* King, Defender
 “of the Faith, and so forth; to the Sheriff of *Berkshire*,
 “Greeting. **We** command you, that you omit not by
 “reason of any Liberty of your County, but that you
 “take *Charles Long*, late of *Burford* in the County of *Ox-*
 “*ford*, Gentleman, (being outlawed in the said County of
 “*Oxford*, on *Thursday*, the sixteenth Day of *October* last
 “past, at the Suit of *William Burton*, Gentleman, of a
 “Plea of Debt, as the Sheriff of *Oxfordshire* aforesaid re-
 “turned to our Justices at *Westminster* on the Morrow of
 “*All-Souls* then next ensuing) if the said *Charles Long* may
 “be

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“ be found in your Bailiwick ; and him safely keep, so that
 “ you may have his Body before our Justices at *Westmin-*
 “ *ster* from the Day of Saint *Martin* in fifteen Days, to do
 “ and receive what our Court shall consider concerning
 “ him in this behalf. **Witness** Sir *John Willes*, Knight,
 “ at *Westminster*, the sixth Day of *November* in the twenty
 “ ninth year of our Reign.

“ Sheriff's Return;
 “ *Cepi Corpus*.

“ By Virtue of this Writ to me directed, I have taken
 “ the Body of the within-named *Charles Long*; which I
 “ have ready at the Day and Place within-contained, ac-
 “ cording as by this Writ it is commanded me.

“ §. 3. * *Bill of Middlesex, and Latitat thereupon, in the*
 “ *Court of King's Bench.*

“ *Bill of Middlesex,*
 “ for Trespas;

“ *Middlesex,* } “ **The Sheriff** is commanded that he
 “ to wit. } “ take *Charles Long*, late of *Burford* in
 “ the County of *Oxford*, if he may be found in his Baili-
 “ wick, and him safely keep, so that he may have his Bo-
 “ dy before the Lord the King at *Westminster*, on *Wednes-*
 “ *day* next after fifteen Days of *Easter*, to answer *William*
 “ *Burton*, Gentleman, of a Plea of Trespas; [and also
 “ to a Bill of the said *William* against the aforesaid *Charles*,
 “ for two hundred Pounds of Debt, according to the
 “ Custom of the Court of the said Lord the King, before
 “ the King himself to be exhibited;] and that he have
 “ there then this Precept.

“ Sheriff's Return;
 “ *Non est inventus*.

“ The within-named *Charles Long* is not found in my
 “ Bailiwick.

“ *Latitat*.

“ **GEORGE** the second by the Grace of God of
 “ *Great Britain, France, and Ireland* King, Defender
 “ of the Faith, and so forth; to the Sheriff of *Berkshire*,
 “ Greeting. **Whereas** We lately commanded our Sheriff
 “ of *Middlesex* that he should take *Charles Long*, late of
 “ *Burford* in the County of *Oxford*, if he might be found
 “ in his Bailiwick, and him safely keep, so that he might

* Note, that §. 3, and §. 4, are the usual Methods of Process, to
 compel an Appearance, in the Courts of *King's Bench*, and *Exchequer*; in
 which the Practice of those Courts does principally differ from that of the
 Court of *Common Pleas*: The subsequent Stages of Proceeding being nearly
 alike in them all.

“ be

“be before Us at *Westminster*, at a certain Day now past, No. IX.
 “to answer unto *William Burton*, Gentleman, of a Plea
 “of Trespafs; [and also to a Bill of the said *William* “*Ac etiam.*
 “against the aforesaid *Charles*, for two hundred Pounds
 “of Debt, according to the Custom of our Court, before
 “Us to be exhibited;] and our said Sheriff of *Middlesex*
 “at that Day returned to Us that the aforesaid *Charles* was
 “not found in his Bailiwick; Whereupon on the Behalf
 “of the aforesaid *William* in our Court before Us it is
 “sufficiently attested, that the aforesaid *Charles* lurks and
 “runs about in your County: **Therefore** We command
 “you, that you take him, if he may be found in your
 “Bailiwick, and him safely keep, so that you may have
 “his Body before Us at *Westminster* on *Tuesday* next after
 “five Weeks of *Easter*, to answer to the aforesaid *William*
 “of the Plea and Bill aforesaid: And have you there then
 “this Writ. **Witness** Sir *Dudley Ryder*, Knight, at *West-*
 “*minster*, the eighteenth Day of *April*, in the twenty eighth
 “Year of our Reign.

“By virtue of this Writ to me directed, I have taken “Sheriff’s Return;
 “the Body of the within-named *Charles Long*; which I “*Cepi Corpus.*
 “have ready at the Day and Place within-contained, ac-
 “cording as by this Writ it is commanded me.

“§. 4. *Writ of Quo minus in the Exchequer.*

“**GEORGE** the second by the Grace of God of
 “*Great Britain, France, and Ireland* King, Defender
 “of the Faith, and so forth; to the Sheriff of *Berkshire*,
 “Greeting. **We** command you, that you omit not by
 “reason of any Liberty of your County, but that you
 “enter the same, and take *Charles Long*, late of *Burford*
 “in the County of *Oxford*, Gentleman, wheresoever he
 “shall be found in your Bailiwick, and him safely keep,
 “so that you may have his Body before the Barons of our
 “Exchequer at *Westminster*, on the Morrow of the holy
 “*Trinity*, to answer *William Burton* our Debtor of a Plea,
 “that he render to him two hundred Pounds which he
 “owes him and unjustly detains, whereby he is the less
 “able to satisfy Us the Debts which he owes Us at our
 “said Exchequer, as he saith he can reasonably shew that
 “the same he ought to render: And have you there this
 “Writ. **Witness** Sir *Thomas Parker*, Knight, at *West-*
 “*minster*,

No. XI.

*“minster, the sixth Day of May, in the twenty eighth Year
“of our Reign.*

“Sheriff’s Return;
“Cepi Corpus.

“By Virtue of this Writ to me directed, I have taken
“the Body of the within-named *Charles Long*; which I
“have ready before the Barons within-written, according
“as within it is commanded me.”

§. 5. *Special Bail; on the Arrest of the Defendant, pursuant to the Testatum Capias, in page 170.*

Bail-Bond, to the
Sheriff.

Know all Men by these Presents, that We *Charles Long* of *Burford* in the County of *Oxford*, Gentleman, *Peter Hammond* of *Northleigh* in the said County, Yeoman, and *Edward Thomlinson* of *Woodstock* in the said County, Innholder, are held and firmly bound to *Christopher Jones*, Esquire, Sheriff of the County of *Berks*, in four hundred Pounds of lawful Money of *Great Britain*, to be paid to the said Sheriff, or his certain Attorney, Executors, Administrators, or Assigns; for which Payment well and truly to be made, We bind ourselves and each of us by himself for the Whole and in Gross, our and every of our Heirs, Executors, and Administrators, firmly by these Presents, sealed with our Seals. Dated the fifteenth Day of *May* in the twenty eighth Year of the Reign of our sovereign Lord *George* the second by the Grace of God King of *Great Britain, France, and Ireland*, Defender of the Faith, and so forth, and in the Year of our Lord one thousand, seven hundred, and fifty five.

The Condition of this Obligation is such, that if the above-bounden *Charles Long* do appear before the Justices of our sovereign Lord the King at *Westminster*, on the Morrow of the holy *Trinity*, to answer *William Burton*, Gentleman, of a Plea of Debt of two hundred Pounds, then this Obligation shall be void and of none Effect, or else shall be and remain in full Force and Virtue.

Sealed, and delivered, being
first duly stamped, in the
presence of

Henry Shaw.

Timothy Griffith.

Charles Long. (L. S.)

Peter Hammond. (L. S.)

Edward Thomlinson. (L. S.)

You

You Charles Long do acknowlege to owe unto the Plaintiff four hundred Pounds, and you *John Rose* and *Peter Hammond* do severally acknowlege to owe unto the same Person the Sum of two hundred Pounds apiece, to be levied upon your several Goods and Chattels, Lands and Tenements, **upon Condition** that, if the Defendant be condemned in this Action, he shall pay the Condemnation, or render himself a Prisoner in the *Fleet* for the same; and, if he fail so to do, you *John Rose* and *Peter Hammond* do undertake to do it for him.

No. IX.

Recognizance of Bail, before the Commissioner.

Trinity Term, 28 GEO. 2.

Berks, } **On a Testatum Capias** against *Charles Long*, Bail-piece.
to wit. } late of *Burford* in the County of *Oxford*,
Gentleman, returnable on the Morrow of the holy *Trinity*, at the Suit of *William Burton*, of a Plea of Debt of two hundred Pounds;

The Bail are, *John Rose*, of *Witney* in the County of *Oxford*, Esquire.

Peter Hammond, of *Northleigh* in the said County, Yeoman.

Richard Price, Attorney }
for the Defendant.

The Party himself in £ 400.

Each of the Bail in £ 200.

Taken and acknowledged the twenty eighth Day of *May*, in the Year of our Lord one thousand, seven hundred, and fifty five, *de bene esse*, before me

Robert Grove,
one of the Commissioners.

§. 6. *The Record, as removed by Writ of Error.*

The Lord the King hath given in Charge to his trusty and beloved Sir *John Willes*, Knight, his Writ closed in these Words: **GEORGE** the second by the Grace of Writ of Error. God of *Great Britain, France, and Ireland* King, Defender of the Faith, and so forth; to our trusty and beloved Sir *John Willes*, Knight, Greeting. **Because** in the Record, and Process, and also in the Giving of Judgment, of the Plaint which was in our Court before you, and your Fellows, our Justices of the Bench, by our Writ,
M between

No. IX.

between *William Burton*, Gentleman, and *Charles Long*, late of *Burford* in the County of *Oxford*, Gentleman, of a certain Debt of two hundred Pounds, which the said *William* demands of the said *Charles*, manifest Error hath intervened, to the great Damage of him the said *William*, as we from his Complaint are informed: We, being willing that the Error, if any there be, should be corrected in due Manner, and that full and speedy Justice should be done to the Parties aforesaid in this Behalf, do command you, that, if Judgment thereof be given, then under your Seal you do distinctly and openly send the Record and Process of the Plaint aforesaid, with all Things concerning them, and this Writ; so that We may have them from the Day of *Easter* in fifteen Days, wheresoever we shall then be in *England*; that, the Record and Process aforesaid being inspected, We may cause to be done thereupon, for correcting that Error, what of Right and according to the Law and Custom of our Realm of *England* ought to be done. **Witness** Ourself at *Westminster*, the twelfth Day of *February*, in the twenty ninth Year of our Reign.

Chief Justice's
Return.

The Record and Process, whereof in the said Writ Mention above is made, follow in these Words, to wit:

The Record.

Pleas at *Westminster* before Sir *John Willes*, Knight, and his Brethren, Justices of the Bench of the Lord the King at *Westminster*, of the Term of the holy *Trinity*, in the twenty eighth Year of the Reign of the Lord **GEORGE** the second by the Grace of God of *Great Britain, France, and Ireland* King, Defender of the Faith, &c.

Writ.

Oxon, } **Charles Long**, late of *Burford* in the County
to wit. } ty aforesaid, Gentleman, was summoned to
answer *William Burton* of *Yarnton* in the said County,
Gentleman, of a Plea that he render unto him two hundred Pounds, which he owes him and unjustly detains,
[as he saith.] **And whereupon** the said *William*, by
Thomas Gough his Attorney, complains, that whereas on
the first Day of *December*, in the Year of our Lord one
thousand, seven hundred, and fifty four, at *Banbury* in
this County, the said *Charles* by his Writing obligatory
did acknowledge himself to be bound to the said *William*
in the said Sum of two hundred Pounds of lawful Money
of *Great Britain*, to be paid to the said *William*, when-
ever

Declaration, or
Count, on a Bond.

ever after the said *Charles* should be thereto required; nevertheless the said *Charles* (although often required) hath not paid to the said *William* the said Sum of two hundred Pounds, nor any Part thereof, but hitherto altogether hath refused, and doth still refuse, to render the same; wherefore he saith that he is injured, and hath Damage, to the Value of ten Pounds: And thereupon he brings Suit, [and good Proof.] And he brings here into Court the Writing obligatory aforesaid; which testifies the Debt aforesaid in Form aforesaid; the Date whereof is the Day and Year beforementioned. And the aforesaid *Charles*, by *Richard Price* his Attorney, comes and defends the Force and Injury when [and where the Court shall award,] and craves Oyer of the said Writing obligatory, and it is read unto him [in the Form aforesaid:] He likewise craves Oyer of the Condition of the said Writing, and it is read unto him in these Words; "The Condition of this Obligation "is such, that if the above bounden *Charles Long*, his "Heirs, Executors, and Administrators, and every of "them, shall and do from Time to Time, and at all "Times hereafter, well and truly stand to, obey, observe, "fulfill, and keep, the Award, Arbitrament, Order, "Rule, Judgment, final End, and Determination, of "David Stiles, of Woodstock in the said County, Clerk, "and Henry Bacon of Woodstock aforesaid, Gentleman, "(Arbitrators indifferently nominated and chosen by and "between the said *Charles Long* and the abovenamed "William Burton, to arbitrate, award, order, rule, judge, "and determine, of all and all manner of Actions, Cause "or Causes of Action, Suits, Complaints, Debts, Duties, "Reckonings, Accounts, Controversies, Trespases, and "Demands whatsoever, had, moved, or depending, or "which might have been had, moved, or depending, by and "between the said Parties, for any Matter, Cause, or "Thing, from the Beginning of the World until the Day "of the Date hereof) which the said Arbitrators shall "make and publish, of or in the Premises, in Writing "under their Hands and Seals, or otherwise by Word of "Mouth, in the presence of two credible Witnesses, on or "before the first Day of January next ensuing the Date "hereof; then this Obligation to be void and of none "Effect, or else to be and remain in full Force and Vir- "tue." Which being read and heard, the said *Charles* prays leave to imparl therein here until the Octave of the

Profert in Curia.

Defence.

Oyer prayed of the Bond, and Condition, viz. to perform an Award.

Impar lance.

No. IX.

Continuance.

Plea;
No such Award.Replication;
setting forth an
Award.

holy *Trinity*; and it is granted unto him. The same Day is given to the said *William Burton* here, &c. At which Day, to wit, on the Octave of the holy *Trinity*, here come as well the said *William Burton* as the said *Charles Long*, by their Attorneys aforesaid: And hereupon the said *William* prays that the said *Charles* may answer to his Writ and Count aforesaid. And the aforesaid *Charles* defends the Force and Injury, when, &c, and saith, **that** the said *William* ought not to have or maintain his said Action against him, because he saith, that the said *David Stiles* and *Henry Bacon*, the Arbitrators before named in the said Condition, did not make any such Award, Arbitrament, Order, Rule, Judgment, final End, or Determination, of or in the Premises above specified in the said Condition, on or before the first Day of *January*, in the Condition aforesaid above mentioned, according to the Form and Effect of the said Condition: And this he is ready to verify. Wherefore he prays Judgment, whether the said *William* ought to have or maintain his said Action thereof against him; [and that he may go thereof without a Day.] **And** the aforesaid *William* saith, that, for any thing above alleged by the said *Charles* in Pleading, he ought not to be precluded from having his said Action thereof against him; because he saith, that after the making of the said Writing obligatory, and before the said first Day of *January*, to wit, on the twenty sixth Day of *December*, in the Year aforesaid, at *Banbury* aforesaid, in the Presence of two credible Witnesses, namely, *John Dew* of *Charlbury*, in the County aforesaid, and *Richard Morris* of *Wightbam* in the County of *Berks*, the said Arbitrators undertook the Charge of the Award, Arbitrament, Order, Rule, Judgment, final End, and Determination aforesaid, of and in the Premises specified in the Condition aforesaid; and then and there made and published their Award by Word of Mouth in Manner and Form following, that is to say; The said Arbitrators did award, order, and adjudge, that he the said *Charles Long* should forthwith pay to the said *William Burton* the Sum of seventy five Pounds, and that thereupon all Differences between them at the time of the making the said Writing obligatory should finally cease and determine. And the said *William* further saith, that although he afterwards, to wit on the sixth Day of *January*, in the Year of our Lord one thousand, seven hundred, and fifty five, at *Banbury* aforesaid, requested the said

Charles

Charles to pay to him the said *William* the said seventy five Pounds, yet (by Protestation that the said *Charles* hath not stood to, obeyed, observed, fulfilled, or kept any part of the said Award, which by him the said *Charles* ought to have been stood to, obeyed, observed, fulfilled, and kept) for further Plea therein he saith, that the said *Charles* the said seventy five Pounds to the said *William* hath not hitherto paid: And this he is ready to verify. Wherefore he prays Judgment, and his Debt aforesaid, together with his Damages occasioned by the Detention of the said Debt, to be adjudged unto him, &c. **And** the aforesaid *Charles* saith, that the Plea aforesaid, by him the said *William* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are in no wise sufficient in Law for the said *William* to have or maintain his Action aforesaid thereupon against him the said *Charles*; to which the said *Charles* hath no Necessity, neither is he obliged by the Law of the Land, in any manner to answer: And this he is ready to verify. Wherefore, for want of a sufficient Replication in this behalf, the said *Charles*, as aforesaid, prays Judgment, and that the aforesaid *William* may be precluded from having his Action aforesaid thereupon against him, &c. And the said *Charles*, according to the Form of the Statute in that case made and provided, shews to the Court here the Causes of Demurrer following; to wit, that it doth not appear, by the Replication aforesaid, that the said Arbitrators made the same Award in the presence of two credible Witnesses on or before the said first Day of *January*, as they ought to have done, according to the Form and Effect of the Condition aforesaid; and that the Replication aforesaid is uncertain, insufficient, and wants Form. **And** the aforesaid *William* saith, that the Plea aforesaid by him the said *William* in Manner and Form aforesaid above in his Replication pleaded, and the Matter in the same contained, are good and sufficient in Law for the said *William* to have and maintain the said Action of him the said *William* thereupon against the said *Charles*; which said Plea, and the Matter therein contained, the said *William* is ready to verify and prove as the Court shall award: And because the aforesaid *Charles* hath not answered to that Plea, nor hath he hitherto in any manner denied the same, the said *William* as before prays Judgment, and his Debt aforesaid, together with his Damages occasioned by the Detention of

Protestando.

Demurrer.

Causes of Demurrer.

Joinder in Demurrer.

that

No. IX.

Continuances.

Opinion of the Court:

Replication insufficient.

Judgment, for the Defendant.

Amercement of the Plaintiff, and his Pledges.

General Error assigned.

Writ of Scire facias, to hear Errors.

that Debt, to be adjudged unto him, &c. **And because** the Justices here will advise themselves of and upon the Premises before they give Judgment thereupon, a Day is thereupon given to the Parties aforesaid here, until the Morrow of *All-Souls*, to hear their Judgment thereupon, for that the said Justices here are not yet advised thereof. At which Day here come as well the said *Charles* as the said *William*, by their said Attorneys; and because the said Justices here will further advise themselves of and upon the Premises before they give Judgment thereupon, a Day is farther given to the Parties aforesaid here until the Octave of Saint *Hilary*, to hear their Judgment thereupon, for that the said Justices here are not yet advised thereof. At which Day here come as well the said *William Burton* as the said *Charles Long*, by their said Attorneys: **Wherefore**, the Record and Matters aforesaid having been seen, and by the Justices here fully understood, and all and singular the Premises being examined, and mature Deliberation being had thereupon; for that it seems to the said Justices here, that the said Plea of the said *William Burton* before in his Replication pleaded, and the Matter therein contained, are not sufficient in Law, to have and maintain the Action of the aforesaid *William* against the aforesaid *Charles*: **therefore it is considered**, that the aforesaid *William* take nothing by this Writ aforesaid, but that he and his Pledges of prosecuting, to wit, *John Doe* and *Richard Roe*, be in Mercy for his false Complaint; and that the aforesaid *Charles* go thereof without a Day, &c.

Afterwards, to wit, on *Wednesday* next after fifteen Days of *Easter* in this same Term, before the Lord the King, at *Westminster*, comes the aforesaid *William Burton*, by *Peter Manwaring* his Attorney, and saith, that in the Record and Process aforesaid, and also in the Giving of the Judgment in the Plaint aforesaid, it is manifestly erred in this; to wit, that the Judgment aforesaid was given in Form aforesaid for the said *Charles Long* against the aforesaid *William Burton*, where by the Law of the Land Judgment should have been given for the said *William Burton* against the said *Charles Long*: And this he is ready to verify. **And** the said *William* prays the Writ of the said Lord the King, to warn the said *Charles Long* to be before the said Lord the King, to hear the Record and Process aforesaid: And it is granted unto him: By which the

the Sheriff aforesaid is commanded that by good [and lawful Men of his Bailiwick] he cause the aforesaid *Charles Long* to know, that he be before the Lord the King from the Day of *Easter* in five Weeks, wheresoever [he shall then be in *England*,] to hear the Record and Process aforesaid, if [it shall have happened that in the same any Error shall have intervened ;] and further [to do and receive what the Court of the Lord the King shall consider in this behalf.] The same Day is given to the aforesaid *William Burton*. At which Day before the Lord the King, at *Westminster*, comes the aforesaid *William Burton*, by his Attorney aforesaid ; And the Sheriff returns, that by Virtue of the Writ aforesaid to him directed he had caused the said *Charles Long* to know, that he be before the Lord the King at the Time aforesaid in the said Writ contained, by *John Den* and *Richard Fen*, good, &c ; as by the same Writ was commanded him : Which said *Charles Long*, according to the Warning given him in this behalf, here cometh by *Thomas Webb* his Attorney. Whereupon the said *William* saith, that in the Record and Process aforesaid, and also in the Giving of the Judgment aforesaid, it is manifestly erred, alleging the Error aforesaid by him in the Form aforesaid alleged, and prays, that the Judgment aforesaid for the Error aforesaid, and others, in the Record and Process aforesaid being, may be reversed, annulled, and entirely for nothing esteemed, and that the said *Charles* may rejoin to the Errors aforesaid, and that the Court of the said Lord the King here may proceed to the Examination as well of the Record and Process aforesaid, as of the Matter aforesaid above for Error assigned. And the said *Charles* saith, that neither in the Record and Process aforesaid, nor in the Giving of the Judgment aforesaid, in any thing is there erred ; and he prays in like manner that the Court of the said Lord the King here may proceed to the Examination as well of the Record and Process aforesaid, as of the Matters aforesaid above for Error assigned. And because the Court of the Lord the King here is not yet advised what Judgment to give of and upon the Premises, a Day is thereof given to the Parties aforesaid until the Morrow of the holy *Trinity*, before the Lord the King, wheresoever he shall then be in *England*, to hear their Judgment of and upon the Premises, for that the Court of the Lord the King here is not yet advised thereof. At which Day before the Lord the

Sheriff's Return ;
Sire fici.

Error assigned
afresh.

Rejoinder ;
In nullo si erratum.

Continuance.

No. IX.

Opinion of the
Court.

Judgment of the
common Pleas re-
versed.

Judgment, for the
Plaintiff.

Costs.

Defendant amer-
ced.

the King, at *Westminster*, come the Parties aforesaid by their Attorneys aforesaid: **Whereupon**, as well the Record and Process aforesaid, and the Judgment thereupon given, as the Matters aforesaid by the said *William* above for Error assigned, being seen, and by the Court of the Lord the King here being fully understood, and mature Deliberation being thereupon had, for that it appears to the Court of the Lord the King here, that in the Record and Process aforesaid, and also in the Giving of the Judgment aforesaid, it is manifestly erred, **therefore it is considered**, that the Judgment aforesaid, for the Error aforesaid, and others, in the Record and Process aforesaid, be reversed, annulled, and entirely for nothing esteemed; and that the aforesaid *William* recover against the aforesaid *Charles* his Debt aforesaid, and also fifty Pounds for his Damages which he hath sustained, as well on Occasion of the Detention of the said Debt, as for his Costs and Charges by him put unto about his Suit in this behalf, to the said *William* with his Consent by the Court of the Lord the King here adjudged. And the said *Charles* in Mercy.

§. 7. *Process of Execution.*

Writ of *Capias ad*
Satisfaciendum.

GEORGE the second by the Grace of God of Great Britain, France, and Ireland King, Defender of the Faith, and so forth; to the Sheriff of *Oxfordshire*, Greeting. **We** command you, that you take *Charles Long*, late of *Burford*, Gentleman, if he may be found in your Bailiwick, and him safely keep, so that you may have his Body before Us in three Weeks from the Day of the holy *Trinity*, wheresoever We shall then be in *England*, to satisfy *William Burton* for two hundred Pounds Debt, which the said *William Burton* hath lately recovered against him in our Court before Us, and also fifty Pounds, which were adjudged in our said Court before Us to the said *William Burton*, for his Damages which he hath sustained, as well by Occasion of the Detention of his said Debt, as for his Costs and Charges by him put unto about his Suit in this behalf, whereof the said *Charles Long* is convicted, as it appears to Us of Record: And have you there then this Writ. **Witness** Sir *Thomas Denison* *, Knight, at *West-*

* The senior puisne Justice; there being no chief Justice that Term.
minster,

minster, the nineteenth Day of *June*, in the twenty ninth Year of our Reign.

No. IX.

By Virtue of this Writ to me directed, I have taken Sheriff's Return; the Body of the within named *Charles Long*; which I have *Cepi Corpus*. ready before the Lord the King, at *Westminster*, at the Day within-written, as within it is commanded me.

GEORGE the second by the Grace of God of Writ of *Fieri fa-*
Great Britain, France, and Ireland King, Defender of the cias.
Faith, and so forth; to the Sheriff of *Oxfordshire*, Greet-
ing. **We** command you, that of the Goods and Chattels
within your Bailiwick of *Charles Long*, late of *Burford*,
Gentleman, you cause to be made two hundred Pounds
Debt, which *William Burton* lately in our Court before
Us at *Westminster* hath recovered against him, and also fifty
Pounds, which were adjudged in our Court before Us to
the said *William*, for his Damages which he hath sustained,
as well by Occasion of the Detention of his said Debt, as
for his Costs and Charges by him put unto about his Suit
in this behalf, whereof the said *Charles Long* is convicted,
as it appears to Us of Record: And have that Money be-
fore Us in three Weeks from the Day of the holy *Trinity*,
wheresoever We shall then be in *England*, to render to the
said *William* of his Debt and Damages aforesaid: And
have there then this Writ. **Witness** Sir *Thomas Denison*,
Knight, at *Westminster*, the nineteenth Day of *June*, in
the twenty ninth Year of our Reign.

By Virtue of this Writ to me directed, I have caused Sheriff's Return;
to be made of the Goods and Chattels of the within-writ- *Fieri feci.*
ten *Charles Long*, two hundred and fifty Pounds; Which I
have ready before the Lord the King at *Westminster* at the
Day within-written, as it is within commanded me.

No. X.

No. X.

No. X.

*Proceedings on an Indictment of MURDER
at the Assises.*

§. 1. *Indictment, and Conviction, of Murder.*

Session of Oyer
and Terminer.

Commission of

Oyer and Terminer;

Warwickshire, } **It** is remembered, that at the Ses-
sion of Oyer and Terminer of the
Lord the King, holden at *Warwick*, in and for the said
County, on *Friday* the twelfth Day of *March* in the
twentieth Year of the Reign of the Lord **GEORGE** the
second, now King of *Great Britain*, before Sir *William*
Lee, Knight, chief Justice of the said Lord the King
assigned to hold Pleas before the King himself, Sir
Thomas Burnet, Knight, one of the Justices of the said
Lord the King of the Bench, and others their Fellows,
Justices of the said Lord the King, assigned by Letters
patent of the said Lord the King, under the great Seal of
Great Britain, made to them the aforesaid Justices and
others, and any two or more of them, (whereof one of
them the said Sir *William Lee* and Sir *Thomas Burnet*,
among others in the said Letters patent named, the said
Lord the King would should be one) to enquire fully by
the Oath of good and lawful Men of the County aforesaid,
by whom the Truth of the Matter might be the better
known, (and by other Ways, Methods, and Means,
whereby they might the better know, or be able, as well
within Liberties as without,) the Truth of all Treasons,
Misprisions of Treasons, Insurrections, Rebellions, Mur-
ders, Felonies, Manlaughters, Killings, Burglaries,
Rapes of Women, and other Misdeeds, Offences, and
Injuries whatsoever, and also the Accessories of the same,
within the County aforesaid, as well within Liberties as
without, by whomsoever and howsoever done, had, per-
petrated, and committed, and by whom, to whom, when,
how, and in what manner; and of other Articles and Of-
fences in the said Letters patent of the said Lord the King
specified, the Premises and every and each of them how-
soever concerning; and to hear and determine the said
Treasons and other the Premises, according to the Law
and

and Custom of the Realm of *England*; and also Keepers of the Peace, and Justices of the said Lord the King, assigned to hear and determine divers Felonies, Trespasses, and other Misdemeanors committed within the County aforesaid: by the Oath of Sir *James Thompson*, Baronet, *Charles Roper*, *Henry Dawes*, *Peter Wilson*, *Samuel Rogers*, *John Dawson*, *James Philips*, *John Mayo*, *Richard Savage*, *William Bell*, *James Morris*, *Laurence Hall*, and *Charles Carter*, Esquires, good and lawful Men of the County aforesaid, impanelled, sworn, and charged to enquire for the said Lord the King and for the Body of the said County, it is presented, **that** *Peter Hunt*, late of *Birmingham* in the said County, Gentleman, not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, on the fifth Day of *March* in the said twentieth Year of the Reign of the said Lord the King, at *Birmingham* aforesaid, with Force and Arms, in and upon one *Samuel Collins*, in the Peace of God and of the said Lord the King then and there being, feloniously, wilfully, and of his Malice aforethought, did make an Assault; and that the said *Peter Hunt* with a certain drawn Sword, of the value of five Shillings, which he the said *Peter Hunt* in his right Hand then and there had and held, the said *Samuel Collins* in and upon the left Side of the Belly of him the said *Samuel Collins* then and there feloniously, wilfully, and of his Malice aforethought, did strike and thrust; giving unto the said *Samuel Collins*, then and there, with the Sword aforesaid, in and upon the left Side of the Belly of him the said *Samuel Collins*, one mortal Wound of the Breadth of one Inch, and the Depth of nine Inches; of which said mortal Wound he the said *Samuel Collins* then and there instantly died: And so the said *Peter Hunt* him the said *Samuel Collins*, on the aforesaid fifth Day of *March*, in the Year aforesaid, at *Birmingham* aforesaid, in the County aforesaid, in Manner and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, did kill and murder, against the Peace of the said Lord the now King, his Crown, and Dignity. **Whereupon** the Sheriff of the County aforesaid is commanded, that he omit not for any Liberty in his Bailiwick, but that he take the said *Peter Hunt*, if he may be found in his Bailiwick, and him safely keep, to answer to the Felony and Murder whereof he stands indicted. **Which** said Indictment the said Justices of the Lord the King abovenamed, afterwards,

No. X.

and of the Peace.

Grand Jury.

Indictment.

Capias.

Session of Gaol-delivery.

No. X.

Arraignment.

Plea; Not Guilty.

Verdict.

Verdict; Guilty
of Murder.

to wit, at the Delivery of the Gaol of the said Lord the King, holden at *Warwick* in and for the County aforesaid, on *Friday* the sixth Day of *August*, in the twenty first Year of the Reign of the said Lord the King, before *Charles Clarke*, Esquire, one of the Barons of the Exchequer of the said Lord the King, *Sir Michael Foster*, Knight, one of the Justices of the said Lord the King assigned to hold Pleas before the King himself, and others their Fellows, Justices of the said Lord the King, assigned to deliver his said Gaol of the County aforesaid of the Prisoners therein being, by their proper Hands do deliver here in Court of Record in Form of Law to be determined. **And afterwards**, to wit, at the same Delivery of the Gaol of the said Lord the King of his County aforesaid, on the said *Friday* the sixth Day of *August*, in the said twenty first Year of the Reign of the said Lord the King, before the said Justices of the Lord the King last above named and others their Fellows aforesaid, here cometh the said *Peter Hunt*, under the Custody of *William Browne*, Esquire, Sheriff of the County aforesaid, (in whose Custody in the Goal of the County aforesaid, for the Cause aforesaid, he had been before committed) being brought to the Bar by the said Sheriff, to whom he is here also committed: **And** forthwith being demanded of the Premises aforesaid above charged upon him how he will acquit himself thereof, he saith, that he is not guilty thereof; and thereof for Good and Evil he puts himself upon the Country: **Therefore** let a Jury thereupon here immediately come before the said Justices of the Lord the King last abovenamed, and others their Fellows aforesaid, by whom the Truth of the Matter may be the better known, and who have no Affinity to the said *Peter Hunt*, to recognize upon their Oath, whether the said *Peter Hunt* be guilty of the Premises in the Indictment aforesaid above specified, or not guilty. And the Jurors of the said Jury by the said Sheriff for this Purpose impanelled and returned, to wit, *David Williams*, *John Smith*, *Thomas Horne*, *Charles Nokes*, *Richard May*, *Walter Duke*, *Matthew Lyon*, *James White*, *William Bates*, *Oliver Green*, *Bartholomew Nash*, and *Henry Long*, being called, come; Who being elected, tried, and sworn, to speak the Truth of the Premises, upon their Oath say, **that** the said *Peter Hunt* is guilty of the Felony and Murder aforesaid, on him above charged in the Form

Form aforesaid, as by the Indictment aforesaid is above supposed against him; and that the said *Peter Hunt* at the Time of committing the said Felony and Murder, or at any Time since, had no Goods or Chattels, Lands or Tenements, to the Knowledge of the said Jurors. And upon this it is demanded of him, if he hath or knoweth any thing to say, wherefore the said Justices ought not upon the Premises to proceed to Judgment and Execution of him: Who nothing further saith, unless as he before had said: **Therefore it is considered** by the said Justices Judgment, of here, that the said *Peter Hunt* be hanged by the Neck Death, till he be dead.

§. 2. *Conviction of Manlaughter.*

— upon their Oath say, **that** the said *Peter Hunt* Verdict; --- Not is not guilty of the Murder aforesaid, above charged upon him; but that the said *Peter* is guilty of the felonious guilty of Murder; Slaying of the aforesaid *Samuel Collins*; and that he had Guilty of Man- no Goods or Chattels, Lands or Tenements, at the Time slaughtering. of the Felony and Manlaughter aforesaid, or ever afterwards to their Knowledge. And immediately it is demanded of the said *Peter*, if he hath or knoweth any thing to say, wherefore the Justices here ought not upon the Premises to proceed to Judgment and Execution of him: **Who saith** that he is a Clerk, and prayeth the Benefit of Clergy prayed. Clergy to be allowed him in this behalf: **Therefore it** Judgment, to be is considered by the said Justices here, that the said *Peter Hunt* be burned in his left Hand, and delivered. And burned, and delivered. immediately he is burned in his left Hand, and is delivered, according to the Form of the Statute.



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